

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KAYLA JEAN AYERS,	:	CASE NO. 5:20-cv-1654
	:	
Petitioner,	:	JUDGE SARA LIOI
	:	
v.	:	Magistrate Judge Carmen E. Henderson
	:	
DIRECTOR, OHIO DEPARTMENT	:	
OF REHABILITATION &	:	
CORRECTION,	:	
	:	
Respondent.	:	

PRE-TRIAL/JURY TRIAL/SENTENCING HEARING

In the Court of Common Pleas
For Stark County, Ohio
Case No. 2012 CR 1567

Tr. Vol. 1

Respectfully submitted,

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Ohio Attorney General

s/Maura O'Neill Jaite
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IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 2012 CR 1567

2013 CA 00034

STATE OF OHIO,)
)
Plaintiff,) TRANSCRIPT OF
) PROCEEDINGS
versus)
)
KAYLA J. AYERS,) VOLUME NO. I
)
Defendant.)

2013 MAR 27 AM 11:33

CLERK OF COURTS
STARK COUNTY OHIO

BE IT REMEMBERED, That upon the
hearing of the above entitled matter in the
Court of Common Pleas, Stark County, Ohio,
before the Honorable Kristin G. Farmer,
Judge, and commencing on January 28, 2013,
the following proceedings were had:

- - - - -

VICKI I. DENNEWITZ, RPR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

APPEARANCES:

On Behalf of the Plaintiff:

Stark County Prosecutor's Office

Dennis Barr, Assistant Prosecutor

Toni Schnellinger,

Assistant Prosecutor

Stark County Office Building

Suite 510

Canton, Ohio 44702

On Behalf of the Defendant:

Stark County Public Defender's Office

Matthew Kuhn, Attorney at Law

April Bible, Attorney at Law

201 Cleveland Avenue South

Canton, Ohio 44702

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OPENING STATEMENTS:

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By Mr. Kuhn Page 176

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STATE'S WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>FDX</u>
Richard Annen	181	189			
Curtis Ricker	195	202			
Michael Canfora	210	218			
Reginald Winters	225				

P R O C E E D I N G S

- - - - -

THE COURT: Go on the record now.

This matter is 2012 CR 1567, State of Ohio
versus Kayla Ayers.

Let the record reflect that
counsel for the -- for the State, Attorney
Barr and Attorney Schnellinger, are present
as well as counsel for the Defendant,
Attorney Kuhn and Attorney Bible. And the
Defendant is present in the courtroom at
this time.

I'll just indicate for the record
that the attorneys have had the opportunity
to review the cards and the questionnaires
for the prospective jurors, and while they
have been provided, the names of the
jurors -- just for identification purposes,
they are to refer to the prospective jurors
by their number only. And all questions
are to be asked of every one of the entire
panel of the prospective jurors, not just
those that are in the box.

With respect to the prospective
jurors, counsel will be given an unlimited

1 number of challenges for cause. Each side
2 will have four peremptory challenges with
3 respect to the twelve members of the panel,
4 and one peremptory challenge with respect
5 to each alternate.

6 I have been provided with a list
7 of witnesses and exhibits from the State of
8 Ohio. And just for the purposes of
9 identification and for the purpose of
10 asking the jurors if anyone knows any of
11 the potential witnesses, those are in fact
12 the entire list of witnesses that need to
13 be identified at this time?

14 MR. BARR: They are, Your Honor.

15 THE COURT: Okay, thank you. And
16 I will also note for the record that prior
17 to going on the record in this matter, the
18 Court discussed Juror number 10, who is an
19 employee of the court, and Juror number 79
20 who is here, but has mono. And it's my
21 understanding that the counsel have agreed
22 to dismiss both Jurors number 10 and Juror
23 number 79 for cause and that is with the
24 agreement of the parties; is that correct?

25 MR. BARR: Yes, Your Honor.

1 MR. KUHN: Yes, thank you, Judge.

2 THE COURT: Okay. Now, before we
3 go any further, I do have two motions in
4 limine, one by the State of Ohio and the
5 other -- there were actually two filed by
6 the Defendant, but I think that they're
7 both -- one was with prior counsel and one
8 with current counsel. I think that they
9 both seek to keep out the same evidence.

10 At this time, Attorney Barr, do
11 you have any response to the Defendant's
12 motion in limine?

13 (Thereupon, Mr. Barr and Ms.
14 Schnellinger had a discussion off
15 the record.)

16 MR. BARR: Well, Your Honor,
17 obviously we don't intend to go there with
18 our case, that is not relevant. However,
19 in the statement that she gave to Detective
20 Ricker, there's mention of Child Prevention
21 [sic] Services being involved because of
22 the fire and things like that, and I don't
23 think that reflects anything on her
24 parenting skills or anything of that
25 nature, and it would go to Brennan as well

1 as the Defendant. So that's the only area
2 that
3 we -- we're not going to elicit the
4 testimony, but it does come out in that
5 area.

6 THE COURT: Okay, thank you.
7 Attorney Kuhn.

8 MR. KUHN: Thank you very much,
9 Judge. You are correct that there are two
10 motions filed, one by Attorney Powers and
11 then most recently the one that I filed,
12 and they do cover similar evidence or
13 testimony or anticipated testimony.

14 I just wanted to be I guess a
15 little bit more specific with regard to the
16 allegations of lice infestation. You know,
17 I think the officer may testify as to my
18 client doing some laundry, I guess just
19 sort of in a general sense as opposed to I
20 hope the officer wouldn't testify that
21 she -- that my client said she was doing
22 laundry because of the lice infestation.

23 And in addition, I guess to
24 clarify, I do understand that CPS probably
25 gets involved when there is a fire and

1 someone's charged with something like this,
2 and I guess I wanted to prevent any
3 testimony regarding prior involvement with
4 CPS.

5 THE COURT: Okay.

6 MR. KUHN: So that was the purpose
7 of my motion.

8 THE COURT: Okay. And Attorney
9 Barr, you don't intend on --

10 MR. BARR: No. I think, Judge, I
11 mean, you know, again, in that statement
12 Kayla herself brings up the lice issue.
13 But, I mean, lice is a problem with
14 everybody. Last year I had to go through
15 that problem with my kids, they got it from
16 school and all that.

17 THE COURT: Right.

18 MR. BARR: So I don't think it
19 reflects on her parenting skills. We don't
20 intend to use it in that fashion.

21 As far as doing laundry, the
22 Defendant herself says, I was downstairs
23 doing laundry and that's when the fire
24 started. So it's all germane to this.
25 But, again, we're not going to stand up and

1 argue, oh, she's a bad parent because she's
2 doing laundry and her kids had lice. We
3 don't intend to do that.

4 THE COURT: Okay. So it's not
5 your intention to elicit any testimony from
6 the officers with respect to the dirty
7 house or the lice infestation?

8 MR. BARR: No.

9 THE COURT: Just anything that she
10 did say in her statement?

11 MR. BARR: Yes.

12 THE COURT: Okay. Well, with
13 respect to that, anything that she did make
14 in her statement can come in. Any
15 testimony elicited from any witness
16 regarding any of these facts with respect
17 to CPS's involvement, beyond the instant
18 matter, whether it's through prior
19 dealings, the lice infestation, or the
20 house, none of that will come in, okay?

21 MR. KUHN: Thank you, Judge.

22 THE COURT: Yep. Now with respect
23 to the State's motion in limine, I guess,
24 Attorney Kuhn, do you have any response to
25 that?

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MR. KUHN: If I could have just a moment, Judge.

THE COURT: Sure.

(Thereupon, Mr. Kuhn had a discussion with Ms. Bible off the record.)

MR. KUHN: Thank you, Judge. We do understand Prosecutor Barr's motion here, and we don't intend to introduce any evidence to that effect. Thank you.

THE COURT: All right. Very good. The motion will be sustained. We are going go pick up the jury at this time.

Let me just note for the record that this Court previously ordered, upon its own motion, a competency evaluation on the Defendant. And the Defendant has refused to cooperate with that evaluation. Given that the law states there's a presumption that everyone who comes before it is competent, unless shown otherwise, the Court does find that by her refusal to cooperate with the competency evaluation, the Court finds the Defendant is competent to testify -- competent to stand trial in

1 this matter.

2 Is there anything that anybody
3 wishes to add with respect to that?

4 MR. BARR: Not with respect to
5 that, Your Honor, but I do have a couple
6 housekeeping things I'd like to bring to
7 the Court's attention.

8 THE COURT: Okay.

9 MR. BARR: One is, there will be
10 some jail calls or portions of jail calls
11 played. I believe that counsel for the
12 Defendant is willing to stipulate to the
13 authenticity of the calls so we don't have
14 to call in Mary Deck from the jail. Is
15 that correct?

16 MS. BIBLE: That's correct, Your
17 Honor, I did talk to the Prosecutors about
18 that.

19 THE COURT: Okay.

20 MR. BARR: And secondly, Your
21 Honor, Miss Ayers did give a statement on
22 October 4th, a noncustodial statement, to
23 Officer Ricker and Reggie Winters, the
24 arson investigator at the Massillon Police
25 [sic] Department. That was both video and

1 audio recorded. However, there was -- on
2 the original, there's a period of about 20
3 minutes where Miss Ayers sits in the room
4 by herself, nobody talks to her. One
5 officer comes in and checks her purse. And
6 then also on the original, the officers
7 leave the room and Officer Ricker comes
8 back in and then decides at that point in
9 time that he's going to conduct what could
10 be a custodial -- custodial interrogation
11 and begins to Mirandize Miss Ayers, and she
12 invokes her Miranda rights which would be
13 improper to put before the jury.

14 So we have obtained an edited copy
15 of that original statement. That will
16 start when the interview starts, and it
17 does not contain that Miranda warning and
18 her refusal to go further under Miranda --

19 THE COURT: Okay.

20 MR. BARR: -- so as to speed
21 things along.

22 THE COURT: Okay.

23 MR. KUHN: Judge, we would, I
24 guess, agree to the edited version.

25 THE COURT: Okay.

1 MR. KUHN: I guess from a personal
2 standpoint, I would like to maybe call to
3 the jury's attention that it is an edited
4 version and there's 20 minutes --

5 THE COURT: Very good.

6 MR. KUHN: -- where Ms. Ayers is
7 seated in an interrogation room by herself
8 so that that fact I guess isn't overlooked.

9 THE COURT: I guess what I would
10 just suggest to the jury that there may
11 appear to be lapses in time or what appears
12 to have been portions cut out, that the
13 statement has been edited to play in
14 accordance with the Rules of Evidence,
15 you're not to make any assumptions or draw
16 any conclusions by the fact that an edited
17 version is being played. Is that
18 acceptable?

19 MR. BARR: That's acceptable, Your
20 Honor.

21 MR. KUHN: Yes, Judge, thank you.

22 THE COURT: All right. Anything
23 further?

24 MR. BARR: No, Your Honor. Thank
25 you.

1 THE COURT: Okay. Attorney Kuhn?

2 MR. KUHN: Nothing at this time,

3 Judge.

4 THE COURT: Okay, thank you. All
5 right. And we will go off the record until
6 the jury is brought up.

7 Just so that you all know, you'll
8 be have -- you'll each have 30 minutes for
9 voir dire, 30 minutes for an opening
10 statement, 30 minutes for a closing
11 statement, and the State can decide in what
12 manner you wish to rebut, obviously no more
13 than 20 and 10, okay?

14 MR. BARR: Uh-huh.

15 THE COURT: And feel free not to
16 take all of it, too.

17 (Thereupon, the prospective jurors
18 entered the courtroom at 9:25
19 a.m.)

20 THE COURT: All right. Thank you,
21 you may be seated.

22 All right. Good morning to all of
23 you. My remarks this morning are addressed
24 to those of you who have been called as
25 prospective jurors in this case. I welcome

1 you to the Stark County Court of Common
2 Pleas. I am Judge Kristin Farmer, and I
3 will be presiding over this matter for
4 which you have been summonsed.

5 You've already met my Magistrate
6 and bailiff, Lori Flowers. Much of your
7 time here is going to be spent in her care.
8 If at any time you have any needs which we
9 can help you with, she will be more than
10 happy to help you and see how we can
11 accommodate you.

12 Also present in the courtroom,
13 sitting in front of me, is the court
14 reporter, Vicki Dennewitz. It's her job to
15 make a complete record. She's typing down
16 everything that is said in the courtroom
17 this morning. But in -- in the absence of
18 Magistrate Flowers, she is also a contact
19 person for you should you have any
20 information that you need to relay [sic] to
21 the Court.

22 Now, it's the Court's intention
23 that your service as jurors, or prospective
24 jurors this morning, be a rewarding
25 experience. We know that your service

1 poses some inconvenience, especially when
2 days like today and there's a lot of bad
3 weather and no one wants to get out of bed,
4 let alone come on down here. But we do
5 appreciate it and we do believe that you
6 recognize that your jury service here today
7 is vital to our American system of justice.
8 It's both a legal obligation and a civic
9 duty, and it's a sacrifice required by our
10 system of Government.

11 Now, you all have been summonsed
12 for a case and it is a criminal case. It's
13 entitled the State of Ohio versus Kayla
14 Ayers. And at this time I'm going to ask
15 the attorneys in the case to identify
16 themselves, and in the case of the
17 Defendant to identify the Defendant as
18 well. State of Ohio.

19 MR. BARR: Thank you, Your Honor.
20 Good morning, ladies and gentlemen, my name
21 is Dennis Barr, I work for the Stark County
22 Prosecutor's office. Seated with me is Ms.
23 Toni Schnellinger, she's also an Assistant
24 Prosecutor.

25 THE COURT: Thank you.

1 Attorney Kuhn.

2 MR. KUHN: Good morning, folks, my
3 name is Matt Kuhn. This is my colleague,
4 April Bible. And this is my client, Kayla
5 Ayers.

6 THE COURT: Thank you.

7 Now before we go on, because
8 sometimes this question comes up later, but
9 I'd rather get it out of the way first, is
10 anyone having any difficulty hearing or
11 seeing any of the parties or myself? Okay,
12 very good.

13 How is the temperature? Is it
14 cold, too hot?

15 UNIDENTIFIED JUROR: Little cool.

16 THE COURT: Little cool? Okay.
17 We can adjust the thermostat and hopefully
18 it will take the chill out of here. Monday
19 morning, the courtroom's been empty all
20 weekend, so it takes a little bit of time
21 to warm up. If at any time any of you then
22 get too hot, just let us know and we'll do
23 our best to accommodate you, okay?

24 Now, jury service may be strange
25 to you so a short explanation is in order.

1 Those who participate in a trial must do so
2 in accordance with established rules.
3 That's true of the witnesses, of the
4 lawyers, of the Judge, and it's equally
5 true of you as jurors.

6 The lawyers are going to present
7 the evidence according to the rules. I, as
8 the Judge, am going to enforce those rules
9 and determine what evidence may be
10 admitted. You, as jurors in this case,
11 will be the sole judges of the facts, the
12 credibility of the witnesses, and the
13 weight to be given to the testimony.

14 The State of Ohio and the
15 Defendant are entitled to jurors who
16 approach this case with open minds and
17 agree to keep their minds open until a
18 verdict is reached.

19 Jurors must be as free as humanly
20 possible from any bias, prejudice, or
21 sympathy, and must be not -- must not be
22 influenced by any preconceived ideas as to
23 the facts or as to the law.

24 Now, although you are -- may be
25 qualified to serve as a juror in this case,

1 there could be something about your past,
2 about a relationship that you've had that
3 may make it difficult for you, embarrassing
4 for you to serve as a juror in this case,
5 and it may disqualify you as serving as a
6 juror in this case.

7 Now, a trial starts with the
8 selection of a jury. And as prospective
9 jurors, you will be questioned to determine
10 your qualifications in this case. Our
11 purpose is to obtain a fair and impartial
12 jury. And since this is an important part
13 of the trial, you are required to take an
14 oath before questions are asked.

15 And at this time I would ask
16 Magistrate Flowers to administer the oath
17 to the prospective jurors.

18 THE BAILIFF: If you could please
19 stand and raise your right hands.

20 - - - - -
21 (Thereupon, the oath was
22 administered to the prospective
23 jurors by the Bailiff.)

24 THE BAILIFF: Thank you. Please
25 be seated.

1 THE COURT: Now, is there anyone
2 in the prospective jury panel who was not
3 able to take the oath as administered by
4 the Court? Okay. Very good.

5 Now at this time, as I indicated,
6 the Court and counsel are going to ask you
7 some questions. These questions are not
8 designed to pry into your personal affairs,
9 but to discover if you have any knowledge
10 of this case, if you have any preconceived
11 opinion that you cannot lay aside, or if
12 you have any experience that might cause
13 you to identify with either side. These
14 questions are necessary to ensure each
15 party an impartial jury.

16 I'm going to ask all of you to
17 listen closely to the questions. And if
18 you are silent in response, it will
19 indicate a negative answer. If, however,
20 any one or more of you believe your answer
21 to be otherwise, please make that fact
22 known to the Court or to the attorney who
23 asked the question by raising your hand.

24 Now, for those of you who are
25 seated here as prospective jurors, we're

1 going to select twelve jurors to serve on
2 the panel and two alternates to serve in
3 this case.

4 When the Court and counsel address
5 you and ask you questions, they're going to
6 do so by your juror number only. And we
7 don't do this to impersonalize the process,
8 but out of respect for your privacy. We
9 feel that just addressing you by your
10 numbers only is the best route.

11 And while the attorneys have all
12 the information that you filled out this
13 morning with respect to prior jury service
14 and the questions that were asked of you,
15 they don't have your names. So there's --
16 the only way they know how to refer to you
17 is by your juror number.

18 Another reason that we do this is
19 that there could be two Mr. Smiths in this
20 panel. And so that we are clear as to whom
21 we are talking to and who is responding to
22 a question, we just ask that you use your
23 numbers so that we're talking to the right
24 person.

25 Now, when these questions are

1 asked by either the Court or by the
2 counsel, I'm going to ask that regardless
3 of where you're seated, if you're seated up
4 in the box or if you're seated out in the
5 gallery there, that you answer the question
6 if you feel it is appropriate to do so.
7 And, again, if you do have a response to a
8 question, just raise your hand so that we
9 can call on you.

10 Now, I'm going to say this and as
11 soon as the questions start, you're going
12 to say, well, she was just kidding, but
13 these questions are not designed to pry
14 into your personal affairs. However, by
15 the very nature, they're going to. So, if
16 at any point in time you are sitting out
17 there and you believe that you have an
18 answer to a question that's been asked, but
19 you don't want to share it with everyone in
20 the courtroom just because it is personal,
21 you have a right to come up to the bench
22 and have what's known as a sidebar
23 conference. And at the sidebar conference
24 it will be the attorneys, myself, and any
25 juror who feels it's appropriate. We'll

1 have a short discussion about your answer
2 to a question, the court reporter will
3 write down everything that is said, but it
4 will be outside the hearing of all of the
5 other prospective jurors.

6 And if you are eventually selected
7 as a juror in this case, you're going to
8 notice that perhaps from time to time,
9 during the trial, the Court and counsel
10 will have a sidebar conference. Most of
11 the time this is done to deal with
12 evidentiary issues and matters that need to
13 be discussed outside of the hearing of the
14 jury.

15 So if, during the trial, any
16 sidebar conference does come up, I just ask
17 that you not all lean this way and try to
18 hear what we're saying, but just be patient
19 with us and know that we are working on
20 this case as quickly as possible.

21 Now, when the question -- after
22 we're done questioning all of you, I am
23 going to meet with the attorneys and they
24 are going to go over what are known as
25 challenges. A challenge is a particular

1 way in which a jury -- juror, excuse me, is
2 excused from any further service. Now,
3 there are two types of challenges given to
4 the parties. The first is known as a
5 challenge for cause. And that challenge
6 may arise out of some relationship that you
7 have with a party, a witness, or even an
8 attorney in this case, or because of some
9 experience that you might have had or
10 belief or conviction that you hold. It may
11 become apparent, just on the surface, that
12 this would not be an appropriate case for
13 you to serve as a juror. Again, that's
14 known as a challenge for cause.

15 The second type of challenge
16 that's given to each party is known as a
17 peremptory challenge. And under most
18 circumstances, when exercising a peremptory
19 challenge, the counsel does not have to
20 give a reason why he's asking -- why he or
21 she, in this case, is asking for a
22 particular juror to be excused. So while
23 you may have sat here and listened to all
24 the questions that we've given to you, and
25 you may never have answered a question, but

1 all of a sudden you find yourself being
2 excused and perhaps, after you breathe a
3 sigh of relief, you may wonder, well, what
4 did I do wrong, why am I not chosen? And
5 at this point I'm guaranteeing you that you
6 did nothing wrong, there's nothing about
7 you that wouldn't mean that you couldn't
8 serve as a juror in another case, there's
9 just something about maybe an experience
10 that you hold or have had or some
11 conviction that you may hold that would
12 make it just not this case the right case
13 for you to sit on. Again, it doesn't mean
14 that you wouldn't be qualified to serve as
15 a juror in any other case.

16 All right. Now, you're probably
17 all wondering, how long am I going to be --
18 have to be here if I'm selected as a juror.
19 And at this point in time I'm anticipating
20 that the trial in this case will take two
21 days, both today and tomorrow. However, if
22 you are chosen as a juror, your
23 deliberations could take you past Tuesday.
24 And I have no control over that, that's up
25 to you as the jury, how long it takes for

1 you to deliberate.

2 There may be some long hours
3 involved and it may take longer than the
4 two days, although I'm not anticipating
5 that at this time. You will all be given
6 time to contact any family or friends or
7 change any plans that you might have had.

8 Now, does the anticipated length
9 of this trial cause any problems for
10 anybody, the two day commitment?

11 JUROR #27: Maybe.

12 THE COURT: Okay. That's fine.
13 Juror number 27, okay. And what kind of
14 problem will you have?

15 JUROR #27: Work related.

16 THE COURT: Court related?

17 JUROR #27: Work related.

18 THE COURT: Do you have something
19 pressing at work, or deadlines?

20 JUROR #27: Yeah, I mean, it
21 probably involve like nonpublic material of
22 information I wouldn't be able to discuss
23 here.

24 THE COURT: Okay. Do you have
25 meetings or something set for these two

1 days that you cannot change?

2 JUROR #27: Not meetings
3 specifically.

4 THE COURT: Okay. Engagements, is
5 that a better term?

6 JUROR #27: I would just say
7 deadlines.

8 THE COURT: Deadlines, okay. Very
9 good. And are you -- is anybody -- and
10 this goes along with Juror number 27,
11 anybody not going to be paid for their
12 service here today at work? Okay.

13 Juror number 27, these deadlines
14 that you have, are they so pressing that
15 you think that you would not be able to
16 give this matter your full time and
17 attention?

18 JUROR #27: Yeah, I mean, it's
19 kind of -- it's judgmental. You know, it's
20 kind of borderline. I think I can, you
21 know, today and tomorrow possibly, but if
22 it's extended beyond that, it might cause
23 difficulty.

24 THE COURT: Okay. All right,
25 thank you for sharing that.

1 Anybody else have any kind of
2 issues with respect to the time in this
3 case? Okay.

4 Now, are any of you no longer
5 residents of Stark County? Anybody moved
6 out of the county lately and no longer
7 living in Stark County?

8 For any of you is English not your
9 native language? Okay.

10 Have any of you served as a juror
11 in any other court of record within Stark
12 County within the past 12 months? All
13 right.

14 How many of you out there have
15 ever served on a criminal jury before?
16 Anybody? Okay. I thought I'd get more
17 answers from that.

18 Let's start up here with Juror
19 number 28; is that correct?

20 JUROR #28: Yes.

21 THE COURT: All right. Now, do
22 you remember what the nature of the charge
23 was in that case?

24 JUROR #28: It was -- I believe it
25 was theft in a nighttime dwelling.

1 THE COURT: Okay.

2 JUROR #28: And it was quite a few
3 years ago so --

4 THE COURT: Okay. More than ten?

5 JUROR #28: We're talking '80s.

6 THE COURT: Okay, very good, thank
7 you. Do you remember if that was in Stark
8 County, or was it --

9 JUROR #28: No, it was in Stark
10 County.

11 THE COURT: All right, very good.
12 Do you remember if you deliberated to a
13 verdict.

14 JUROR #28: Yes, we did have a
15 verdict.

16 THE COURT: Okay. Was it guilty
17 or not guilty?

18 JUROR #28: It was guilty.

19 THE COURT: All right. Now, do
20 you believe that you can put aside whatever
21 you heard in that case and the law that was
22 given to you in that case and decide this
23 case solely on the evidence presented to
24 you and the law as I give it to you?

25 JUROR #28: Yes, I do.

1 THE COURT: All right. Very good.
2 Thank you.

3 Now, let me see, who else didn't I
4 get out there? I've got -- oh, okay, very
5 good. And you are Juror number 18?

6 JUROR #18: 18.

7 THE COURT: All right. And you
8 served on a criminal jury before?

9 JUROR #18: Yes, it was a murder
10 trial.

11 THE COURT: Murder trial? All
12 right. Do you remember exactly when it
13 was?

14 JUROR #18: Late '70s.

15 THE COURT: All right. And was it
16 in Stark County?

17 JUROR #18: Yes.

18 THE COURT: Do you recall if you
19 deliberated to reach a verdict?

20 JUROR #18: Yes, we did.

21 THE COURT: And what was that
22 verdict?

23 JUROR #18: We acquitted the
24 person.

25 THE COURT: Okay, very good. And

1 just like Juror number 28, do you believe
2 that you could put aside the evidence that
3 you heard in that case and the law that was
4 given to you in that case and decide this
5 case solely on the evidence presented in
6 this case and the law as I give it to you?

7 JUROR #18: Yes.

8 THE COURT: Okay. Thank you.

9 Did I get everybody in the jury
10 box up front? Okay. Let's start with the
11 front row, anybody in the front row? Okay.
12 Juror number -- is it 33?

13 JUROR #33: 33.

14 THE COURT: Okay. And similar
15 questions, do you remember what kind of
16 charge was involved?

17 JUROR #33: Theft.

18 THE COURT: Okay. Do you recall
19 when?

20 JUROR #33: Shooting involved.
21 I'm not sure what --

22 THE COURT: All right. Do you
23 recall when that was?

24 JUROR #33: 2000-ish.

25 THE COURT: Okay. And in Stark

1 County?

2 JUROR #33: Stark County, yes.

3 THE COURT: And did you deliberate
4 to reach a verdict?

5 JUROR #33: Yes, we did.

6 THE COURT: And what was that
7 verdict?

8 JUROR #33: Not guilty.

9 THE COURT: Not guilty. And do
10 you believe that you can put aside the
11 evidence and the law that was given to you
12 in that case and determine a verdict in
13 this case solely based upon the evidence
14 presented to you in this case as well as
15 the law that's given to you in this case?

16 JUROR #33: Absolutely.

17 THE COURT: All right. Very good,
18 thank you.

19 And I believe, is it Juror number
20 34?

21 JUROR #34: Yes.

22 THE COURT: All right. Similar
23 questions, do you remember what kind of
24 charge was involved?

25 JUROR #34: Drug possession.

1 THE COURT: Okay. And approximate
2 date?

3 JUROR #34: About 2005.

4 THE COURT: Okay. And in Stark
5 County, in this courthouse?

6 JUROR #34: Right here, this
7 courthouse.

8 THE COURT: And do you remember
9 what the verdict was?

10 JUROR #34: I was an alternate,
11 but in the end it was guilty.

12 THE COURT: Okay. And, again, can
13 you put aside the evidence and the law that
14 was given to you in that case and determine
15 this case solely upon the evidence that's
16 presented here today and tomorrow as well
17 as upon the law that I give to you in this
18 case?

19 JUROR #34: Yes.

20 THE COURT: Okay. I know I sound
21 like a broken record asking the same
22 questions, but, again, they are necessary
23 to ensure that we get to any sort of bias
24 or prejudice involved.

25 And is it Juror number 38?

1 JUROR #38: Yes.

2 THE COURT: All right. Similar
3 questions, do you remember what the charge
4 was?

5 JUROR #38: It was a malpractice
6 trial.

7 THE COURT: Okay. So it was
8 actually a civil trial?

9 JUROR #38: Yes.

10 THE COURT: Okay. And do you
11 recall when that was?

12 JUROR #38: In the '80s.

13 THE COURT: In the '80s. And was
14 that in Stark County?

15 JUROR #38: Yes.

16 THE COURT: Did you deliberate in
17 that case to reach a verdict?

18 JUROR #38: Yes.

19 THE COURT: And do you recall what
20 that verdict was?

21 JUROR #38: Guilty, I guess.

22 THE COURT: Okay. So you found
23 for the plaintiff --

24 JUROR #38: Yes.

25 THE COURT: -- did you award

1 money?

2 JUROR #38: Yes.

3 THE COURT: Okay. And I do have a
4 question I'm going to ask sort of so that I
5 don't have to repeat this to everyone and
6 put them to sleep, but of all people who
7 served in a civil jury so when I do ask
8 that question keep in mind that it will be
9 directed to you since you did serve on a
10 civil jury, okay?

11 JUROR #38: Okay.

12 THE COURT: All right. How about
13 down here, anyone serve in a criminal case
14 before?

15 JUROR #49: Theft.

16 THE COURT: Theft? And you are
17 Juror number --

18 JUROR #49: 49.

19 THE COURT: -- 39?

20 JUROR #49: 49.

21 THE COURT: 49, okay. And it was
22 a theft case? Do you recall approximately
23 when that was?

24 JUROR #49: I think it was
25 probably ten years ago. Roughly.

1 THE COURT: Okay. Which is hard
2 to believe, but that was around 2000?

3 JUROR #49: Yeah.

4 THE COURT: And in Stark County?

5 JUROR #49: Yeah.

6 THE COURT: And did you deliberate
7 to reach a verdict?

8 JUROR #49: Yeah. It was guilty.

9 THE COURT: Guilty? All right.
10 And, again, do you believe that you can put
11 aside the evidence and the law that was
12 given to you in this case -- in that case
13 and determine a verdict in this case
14 solely --

15 JUROR #49: Yeah.

16 THE COURT: -- based on the
17 evidence and the law as I give to you?
18 Very good, thank you.

19 Anybody else in the front row who
20 served on a criminal jury before? Okay.

21 How about the second row? All
22 right. And you are Juror number 55?

23 JUROR #55: Yes.

24 THE COURT: And do you remember
25 what the nature of the charge was?

1 JUROR #55: Drugs.

2 THE COURT: Drugs. And an
3 approximate time?

4 JUROR #55: I think in 2005.

5 THE COURT: Okay. In Stark
6 County?

7 JUROR #55: Yeah.

8 THE COURT: And do you recall if
9 you deliberated to reach a verdict?

10 JUROR #55: Guilty.

11 THE COURT: Guilty. And, again,
12 do you believe you can put aside that --
13 the evidence that you heard there and the
14 law that was given to you there and
15 determine this case solely based upon the
16 evidence that you hear in this courtroom
17 and the law as I give it to you?

18 JUROR #55: Yes.

19 THE COURT: All right. Very good.
20 Anybody else in the second row? And you
21 are -- are you 72?

22 JUROR #69: No, 69.

23 THE COURT: 69. All right. Do
24 you recall what the charge was?

25 JUROR #69: Theft.

1 THE COURT: Theft. And do you
2 recall when it was?

3 JUROR #69: Late '70s, early '80s.

4 THE COURT: All right. And in
5 Stark County?

6 JUROR #69: Yes.

7 THE COURT: And did you -- do you
8 recall if you deliberated to reach a
9 verdict?

10 JUROR #69: Yes. Guilty.

11 THE COURT: Guilty. And, again,
12 as with everyone before you, can you agree
13 with me to put aside all the evidence and
14 law that was given to you in that case and
15 apply the law as I give it to you to the
16 facts and the evidence that's presented to
17 you in this case?

18 JUROR #69: Yes.

19 THE COURT: Thank you.

20 Anybody else in the second row,
21 criminal case? Okay. Very good.

22 All right. Let's talk about civil
23 cases. Anybody in the panel ever served as
24 a juror on a civil case before? Okay. And
25 you are Juror number 16?

1 JUROR #16: Yes.

2 THE COURT: All right. And do you
3 recall what kind of case that was involved?

4 JUROR #16: I think it might have
5 been like a domestic case.

6 THE COURT: Okay. Do you recall
7 how long ago that was?

8 JUROR #16: The '90s.

9 THE COURT: '90s. And was that in
10 Stark County?

11 JUROR #16: Yes.

12 THE COURT: And do you remember
13 what your verdict was?

14 JUROR #16: Not guilty.

15 THE COURT: Not guilty. All
16 right. And, again, do you believe you can
17 put aside all the facts and the law given
18 to you in that case and apply it solely --
19 apply it solely to the law as I state it to
20 you in this case to the facts as you find
21 them in this case?

22 JUROR #16: Yes.

23 THE COURT: All right. Anybody
24 else in the jury box ever served on a
25 civil? Oh, Juror number 18, you're a

1 popular girl.

2 JUROR #18: It was an insurance
3 case.

4 THE COURT: Okay. Do you recall
5 when it was?

6 JUROR #18: I think the early
7 '80s.

8 THE COURT: All right. And in
9 Stark County?

10 JUROR #18: Yes.

11 THE COURT: And do you recall if
12 you deliberated to reach a verdict?

13 JUROR #18: Yes.

14 THE COURT: And did you find for
15 the plaintiff or the defendant, do you
16 recall?

17 JUROR #18: You know, I really
18 don't remember.

19 THE COURT: Okay. Do you remember
20 if you awarded money?

21 JUROR #18: No, we did not. I
22 think we did -- I think we refused it now
23 that I think about it.

24 THE COURT: All right. Thank you.
25 All right. Anybody else in a

1 civil jury?

2 How about out in the gallery
3 there, anybody ever served as a juror in a
4 civil case? Okay. Juror number 39?

5 JUROR #39: Yeah.

6 THE COURT: Okay. Do you recall
7 what the nature of the case was?

8 JUROR #39: It was an auto
9 accident and they were being sued.

10 THE COURT: Okay. Do you recall
11 when that was, approximately?

12 JUROR #39: Around late '90, maybe
13 early 2000.

14 THE COURT: All right. And that
15 was in Stark County as well?

16 JUROR #39: Yes.

17 THE COURT: Do you remember if you
18 deliberated to reach a verdict?

19 JUROR #39: I was an alternate
20 juror.

21 THE COURT: Okay.

22 JUROR #39: And the Judge sent us
23 home because he told us how it would
24 probably go, it was a chiropractic scam.
25 Like he wasn't there in the courtroom.

1 THE COURT: Okay.

2 JUROR #39: And I think they
3 didn't -- they didn't get any money awarded
4 to them.

5 THE COURT: Okay. Thank you.

6 Anybody else in the front row, a
7 civil trial? Okay.

8 In the back row? Oh, you're
9 popular too, huh? And what -- do you
10 remember what the nature of the case was?

11 JUROR #55: Domestic.

12 THE COURT: Okay. And was
13 that -- do you recall when that was?

14 JUROR #55: I think later '80s.

15 THE COURT: All right. And in
16 Stark County as well?

17 JUROR #55: Yeah.

18 THE COURT: And did you deliberate
19 to reach a verdict?

20 JUROR #55: Yeah.

21 THE COURT: Do you recall what
22 that verdict was?

23 JUROR #55: Guilty.

24 THE COURT: Guilty. And, again,
25 are you able to put aside the facts and the

1 law that was given to you in that case and
2 determine this case solely upon the
3 evidence?

4 JUROR #55: Yes.

5 THE COURT: Okay, thank you.

6 Anybody else in the second row?

7 All right.

8 Now, my questions are going to
9 be -- this question is directed to anyone
10 who served as a juror in a civil case
11 before because there is substantial
12 differences between serving in a civil case
13 and serving in a criminal case, this is
14 particularly true with respect to the
15 burden of proof which is placed upon the
16 prosecution in this case.

17 In a civil case, we say that the
18 plaintiff has to prove the facts by a
19 preponderance of the evidence.

20 In a criminal case, the Defendant
21 is presumed to be innocent and before she
22 can be found guilty, the prosecution must
23 prove all the elements of the offense for
24 which she is charged beyond a reasonable
25 doubt.

1 If the jury has any doubt -- any
2 reasonable doubt I should say, not just any
3 doubt, any reasonable doubt, the Defendant
4 must be acquitted.

5 Will each of you agree that you
6 will be able to set aside the instructions
7 which you heard in the previous civil case,
8 knowing that now a civil case differs
9 substantially from a criminal case in the
10 burden of proof, and try this case based
11 solely upon the instructions as I give them
12 to you and the law which you find in this
13 case? Can everyone agree with me that they
14 can do that? Okay, very good.

15 Now, has anyone been convicted of
16 a serious offense; that is, a felony
17 offense? And obviously keep in mind you do
18 have the right to a sidebar if it's
19 something that you don't wish to discuss
20 with everyone. Anybody been convicted of a
21 serious offense, a felony offense? Okay.
22 Is that Juror number 38?

23 JUROR #72: 72.

24 THE COURT: 72. I am really bad
25 at keeping track here. If it's something

1 you would like to have at a sidebar, we can
2 come up and we can talk about it, or if you
3 feel okay talking about it, that's fine.

4 What offense --

5 JUROR #72: Cultivation of
6 marijuana.

7 THE COURT: Okay. Do you know
8 when that was?

9 JUROR #72: Three years ago.

10 THE COURT: Okay. Are you
11 currently on any probation or parole?

12 JUROR #72: No.

13 THE COURT: And was there anything
14 about your experience in that case which
15 would cause you to believe that this would
16 not be a good case for you to sit on as a
17 fair and impartial juror? No?

18 JUROR #72: No.

19 THE COURT: Okay. You believe
20 that you can put aside the facts in your
21 case and judge this case solely upon the
22 law which I give to you and the facts as
23 you find them?

24 JUROR #72: Yes.

25 THE COURT: And is there anything

1 about your experience in your case that
2 would cause you to side with either the
3 prosecution or the defense? And it's
4 okay -- like, again, there's no wrong
5 answers, no one's going to think any
6 differently of you, all we want are
7 truthful answers.

8 JUROR #72: Right. I don't know.
9 I don't think.

10 THE COURT: Okay. Now, do you
11 recognize either Attorney Barr or Attorney
12 Schnellinger as having been involved in
13 your case?

14 JUROR #72: No.

15 THE COURT: And was that in Stark
16 County?

17 JUROR #72: Yes.

18 THE COURT: All right. And I
19 thank you for your candor in answering
20 those questions.

21 Okay. Do any of you have any
22 physical or mental conditions at this time
23 which might cause you to not be able to
24 serve as a juror in this case? Anybody
25 have difficulty sitting for a long time,

1 anybody's mind distracted by a sick kid,
2 sick parents, relatives, anything like
3 that? Okay, back in the back, is that
4 Juror number 66?

5 JUROR #61: 61.

6 THE COURT: 61. Told you I'm not
7 very good at this.

8 JUROR #61: I have trouble sitting
9 up for a long time because I broke my neck
10 in a car accident.

11 THE COURT: Okay. And I'm sure
12 sitting on those very comfortable benches
13 is only making it that much easier for you,
14 correct?

15 JUROR #61: Yes.

16 THE COURT: Now, if you are chosen
17 as a juror you will get the luxury of
18 having to sit in one of our luxurious seats
19 up here and you will be given time to
20 stretch -- stand up and stretch, you can do
21 that whenever you feel it's necessary.

22 With those sorts of
23 accommodations, do you think that you would
24 be able to give this case your full time
25 and attention, or is it just something that

1 you just can't sit?

2 JUROR #61: Yeah, I'll be fine. I
3 mean, I could wear my brace if I had to.

4 THE COURT: All right, thank you.

5 Anybody have -- I know we went
6 over this earlier. Okay, Juror number 26.

7 JUROR #26: Yeah.

8 THE COURT: Okay. And what kind
9 of issue are you having?

10 JUROR #26: Back problems.

11 THE COURT: Back problems?

12 JUROR #26: Yeah.

13 THE COURT: Is it hard for you to
14 sit for a long time?

15 JUROR #26: Sit for a long time.
16 Car accidents.

17 THE COURT: Okay. Even with the
18 super comfortable chairs up there --

19 JUROR #26: Yeah, it's still a
20 problem.

21 THE COURT: Okay. If you're given
22 accommodations as far as being able to
23 stand up and stretch whenever you feel it's
24 necessary, will that help?

25 JUROR #26: Somewhat. I crack my

1 back sometimes.

2 THE COURT: Okay. And is there
3 anything about your back problem that you
4 think you wouldn't be able to give this
5 case your full time and attention while
6 you're here?

7 JUROR #26: In between.

8 THE COURT: In between? Okay,
9 thank you.

10 Anybody else? As we went over
11 this before -- oops, there we go down
12 there. Okay, Juror number 50?

13 JUROR #50: Yes.

14 THE COURT: Okay. What kind of
15 issues are you having?

16 JUROR #50: I had a heart stent in
17 about two months ago and I'm on meds that
18 sort of, you know, make me drowsy. I
19 wouldn't be able to take them if I served
20 on a jury.

21 THE COURT: Do you think that that
22 medication would cause you to have trouble
23 giving this case your full time and
24 attention?

25 JUROR #50: Well, the blood

1 pressure medicine especially sort of makes
2 me drowsy. And I never take it when I have
3 someplace to go.

4 THE COURT: Well, okay. Well, we
5 don't want you to not take the medicine.
6 You think it would be difficult to give
7 this case your full time and attention?

8 JUROR #50: I think I could if it
9 didn't last that long.

10 THE COURT: And as I indicated
11 earlier, the trial itself is not expected
12 to take past the two days, but whether or
13 not the jury deliberates longer than that,
14 I -- that's not up to me.

15 JUROR #50: I'm also in cardiac
16 rehab.

17 THE COURT: Okay. Do you have
18 appointments scheduled?

19 JUROR #50: Yes. Actually today
20 and tomorrow and Thursday.

21 THE COURT: Do you -- are you able
22 to change those if you need to?

23 JUROR #50: No, there's actually a
24 waiting list to get on those at Aultman
25 Hospital.

1 THE COURT: All right. All right.
2 Thank you. Anybody else?

3 All right. Now, as I previously
4 stated this is a criminal case and it is
5 entitled the State of Ohio versus Kayla
6 Ayers. Attorney Kuhn has identified Miss
7 Ayers for you. Has anybody out in the
8 panel ever heard of or are you familiar
9 with Kayla Ayers? Okay.

10 And, again, Miss Ayers is
11 represented by Attorneys Matthew Kuhn and
12 April Bible. Has anyone heard of or know
13 of either Attorney Kuhn or Attorney Bible?
14 Okay.

15 And the State, again, is
16 represented by Attorney Dennis Barr and
17 Attorney Toni Schnellinger. Now, please
18 raise your hand or indicate if you have a
19 response to whether or not you either know
20 of Attorney Barr or Attorney Schnellinger
21 or had any contact, or if they look
22 familiar to either one of you. Okay.
23 And you're Juror number 49?

24 JUROR #49: Yeah.

25 THE COURT: Okay. Which one looks

1 familiar to you?

2 JUROR #49: Barr, Dennis Barr.

3 THE COURT: Okay. And how -- does
4 he just look familiar, or --

5 JUROR #49: A friend of a friend.

6 THE COURT: Okay. Now, is there
7 anything about your knowledge of Attorney
8 Barr or your relationship, regardless how
9 distant it may be with him, that would
10 cause you to think that this would not be a
11 case where you could be a fair and
12 impartial juror?

13 JUROR #49: No.

14 THE COURT: You're able to put
15 aside whatever you know of him and decide
16 this case solely upon the evidence
17 presented?

18 JUROR #49: (Juror nodding head up
19 and down.)

20 THE COURT: Okay. Anybody else,
21 any of the attorneys or the Defendant
22 herself look familiar or believe that you
23 may know them?

24 Okay. Now, I've indicated that
25 this is a criminal case, and a criminal

1 case begins with the filing of an
2 indictment. And the indictment just sets
3 forth allegations. And I'm going to read
4 to you, in essence, what the allegations in
5 this case are. Now, keep in mind these are
6 only allegations, none of these allegations
7 at this point have been proven. But I'm
8 going to just read to you sort of a
9 description of the charges for which the
10 Defendant is charged so in case you may
11 have heard anything about the events
12 leading up to it or if anything sounds
13 familiar, you can let us know and we can
14 follow-up.

15 So, the Defendant is charged with
16 two counts, the first count being
17 Aggravated Arson. And specifically it's
18 alleged that on the 3rd day of October,
19 2012, Kayla Ayers, by means of fire or
20 explosion, knowingly caused physical harm
21 to 185 26th Street Southeast, Massillon, in
22 Stark County, Ohio, which was an occupied
23 structure.

24 All right. And she's also charged
25 with one count of Endangering Children.

1 And that specifically alleges that on the
2 3rd day of October, in 2012, Kayla Ayers
3 did recklessly, being the parent, guardian,
4 custodian, person having custody or
5 control, or person in loco parentis of
6 three children under 18 years of age, did
7 create a substantial risk to the health or
8 safety of such children by violating a duty
9 of care, protection, or support. And that
10 is alleged to have occurred in Stark
11 County, Ohio.

12 Now, to the best of your
13 recollection, I know that this was a while
14 back, have any of you read or heard
15 anything about this case? All right.
16 Anybody recall ever reading any newspaper
17 articles or hearing anything on the radio
18 or any TV about this case? All right.
19 Very good.

20 Again, to these charges the
21 Defendant has pled not guilty, and it will
22 be the question of whether the
23 Defendant -- of whether the Defendant is
24 guilty or not guilty that you will decide
25 if you're chosen as a juror in this case.

1 Having heard the charges that have
2 been filed against the Defendant, is there
3 any member of the jury panel who feels that
4 he or she cannot give this Defendant a fair
5 trial because of the nature of the charges
6 against her? Okay. And you are Juror
7 number 21?

8 JUROR #21: Correct.

9 THE COURT: All right. Is it
10 something that you feel comfortable
11 discussing in front of --

12 JUROR #21: Sure. I have three
13 small children; four, two, and the daughter
14 that was born on the date of the
15 allegations so kind of impartial to those
16 children and things happening to kids and
17 putting them in danger.

18 THE COURT: Okay. Do you believe
19 that this would not be a good case for you
20 to --

21 JUROR #21: Probably not.

22 THE COURT: Okay. And do you
23 think it would be difficult for you to be
24 fair and impartial in this case?

25 JUROR #21: Absolutely.

1 THE COURT: All right. Thank you
2 for your candor.

3 Anybody else, after having heard
4 the allegations, believe that this might
5 not be the best case for them to be a juror
6 on? Okay. And you are Juror number 72?

7 JUROR #72: 72.

8 THE COURT: All right. And,
9 again, is it something you feel comfortable
10 talking about?

11 JUROR #72: I don't feel
12 comfortable with being judge -- children.

13 THE COURT: Okay. Do you believe
14 that it would be hard for you to be fair
15 and impartial in this case?

16 JUROR #72: Yes. It would, yes.

17 THE COURT: Because it involves
18 children?

19 JUROR #72: Yes.

20 THE COURT: All right. Thank you
21 also for your candor.

22 Anybody else? All right. And you
23 are Juror number 26?

24 JUROR #26: Yeah. I feel the same
25 way. I got two kids of my own, I feel the

1 same exact way as that guy down there and
2 the guy over there, the same way.

3 THE COURT: Okay. You could not
4 be a fair and impartial juror in this case?

5 JUROR #26: No, ma'am.

6 THE COURT: All right, thank you.
7 Thank you for your candor as well.

8 All right. Anybody have similar
9 feelings like that or feelings that are
10 somewhat different, but still they think
11 this might not be the right case for them?
12 All right. Very good.

13 Now, do any of you out there have
14 any personal interest of any kind in this
15 case, whether it be the outcome or anything
16 like that? All right.

17 Now, during the trial in this
18 case, the following witnesses may be called
19 to testify on behalf of the parties, I'm
20 going to read those names to you: Officer
21 Ricker of the Massillon Police Department,
22 Mike Canfora of the Massillon Fire
23 Department, Captain Annen of the Massillon
24 Fire Department, Inspector Winters of the
25 Massillon Fire Department. And the

1 following individuals: Brennan Scott,
2 Karen Ball, Jennifer Conley, Jeff Ayers,
3 Jason Pandrea. Any of those names sound
4 familiar to any of you?

5 Now, having said that -- oh, I
6 have somebody over here. All right, thank
7 you. Juror number 22 [sic]?

8 JUROR #24: Jeff Ayers.

9 THE COURT: Okay.

10 JUROR #24: I had a student named
11 Jeff Ayers.

12 THE COURT: And where was that?

13 JUROR #24: Sandy Valley Local.

14 THE COURT: All right. Do you
15 recall when that was?

16 JUROR #24: The early '70s.

17 THE COURT: That always amazes me
18 about teachers, no matter how long ago it
19 was, you always -- and you remember their
20 names and you could probably tell me where
21 they sat in the classroom and everything
22 that you did teach them.

23 Is there anything about your
24 knowledge -- and I don't know that this is
25 the same Jeff Ayers.

1 JUROR #24: Right.

2 THE COURT: But is there anything
3 about your knowledge of the Jeff Ayers that
4 you were involved with which would cause
5 you maybe to not be the best juror in this
6 case?

7 JUROR #24: No, I don't think so.

8 THE COURT: Okay. And you could
9 still be fair and impartial?

10 JUROR #24: Yes, ma'am.

11 THE COURT: And you believe that
12 you could decide the case just on the facts
13 and not any relationship that you may have
14 had with him?

15 JUROR #24: Yes, ma'am.

16 THE COURT: And you wouldn't give
17 his testimony any more weight than you
18 would somebody else simply because you knew
19 him?

20 JUROR #24: No, ma'am.

21 THE COURT: All right, thank you.

22 Anybody else, any of those names
23 sound familiar? Okay. We'll start up
24 here. Juror number 6 -- no, 5?

25 JUROR #5: Reggie Winters.

1 THE COURT: Okay. And how do you
2 know Mr. Winters?

3 JUROR #5: Just through the work
4 places. I worked in the school system and
5 he used to come to the schools and --

6 THE COURT: Okay. Is there
7 anything about your relationship or
8 knowledge of Mr. Winters that you would
9 have difficulty being a fair and impartial
10 juror in this case?

11 JUROR #5: No.

12 THE COURT: All right. And -- and
13 can you agree with me that you would not
14 give his testimony any more weight or find
15 him more credible just because of the
16 relationship that you had?

17 JUROR #5: I would not.

18 THE COURT: Okay. All right.
19 Anybody in the jury box? Okay. Let's go
20 to the first row. And you are Juror number
21 53?

22 JUROR #53: Yes, ma'am.

23 THE COURT: Okay. And who sounds
24 familiar to you?

25 JUROR #53: The witness, the last

1 one, can you spell the last name to make
2 sure it's not the same person?

3 THE COURT: Sure. The last person
4 was Jason Pan -- Pandrea. I'll have --

5 JUROR #53: Yes.

6 THE COURT: P-A-N-D-R-E-A.

7 JUROR #53: I know him.

8 THE COURT: Okay. And how do you
9 know Mr. Pandrea? And am I saying it right
10 if you know him?

11 JUROR #53: My niece's husband's
12 brother. Family.

13 THE COURT: Husband's brother,
14 okay. Is there anything about your
15 knowledge or your relationship with the
16 witness that would cause you to believe
17 that you could not be fair and impartial in
18 this case?

19 JUROR #53: No.

20 THE COURT: Do you believe that
21 you could put aside your knowledge and your
22 relationship and determine this case solely
23 based upon the evidence that's presented?

24 JUROR #53: Yes, I could.

25 THE COURT: And would you be

1 more -- would you be inclined to give Mr.
2 Pandrea's testimony more weight just
3 because you know him and not because of
4 what -- the evidence presented?

5 JUROR #53: No, ma'am.

6 THE COURT: Okay. Thank you.

7 The second row, anybody in the
8 second row? Okay. And you are Juror
9 number 33? 32?

10 JUROR #59: 59.

11 THE COURT: 59, okay.

12 JUROR #59: The name Jennifer
13 Conley sounds familiar.

14 THE COURT: Okay.

15 JUROR #59: I think I had gone to
16 school with her.

17 THE COURT: All right. And where
18 did you go to school?

19 JUROR #59: Timken Senior High
20 School.

21 THE COURT: Okay. Do you recall
22 when you would have known her?

23 JUROR #59: '93 to '95.

24 THE COURT: Okay. Now, is there
25 anything about your knowledge of Miss

1 Conley that would cause you to believe that
2 this would not be a good --

3 JUROR #59: No, I just know her
4 face if it is the same Jennifer.

5 THE COURT: Okay. And you believe
6 you can put your relationship aside and
7 render a verdict based on the evidence?

8 JUROR #59: Yes, ma'am.

9 THE COURT: And you wouldn't be
10 inclined to give her testimony any more
11 weight just because you know her?

12 JUROR #59: No.

13 THE COURT: All right. Thank you.
14 Anybody else in the back row? All
15 right.

16 Now, as we go through the trial
17 and you may all of a sudden realize, oh, I
18 do know that person, maybe you didn't know
19 their name, maybe you didn't know or it
20 didn't sound familiar, maybe you knew them
21 under a different name, but can you all
22 agree with me that if you do recognize
23 someone as we go through this case that you
24 could raise your hand as soon as you
25 recognize them, you don't have to wait

1 until they finished testifying and don't
2 feel like you're interrupting anything
3 because, like I said, our goal here is to
4 give the Defendant a fair and impartial
5 jury. Can you all agree with me that you
6 can do that if you do eventually recognize
7 a witness? Okay.

8 Now, the fact that the Defendant
9 is here in court for trial or that the
10 charges have been filed against her is not
11 evidence whatsoever of her guilt. The
12 jurors are to consider only evidence that's
13 properly received in the courtroom in
14 determining whether the Defendant is guilty
15 or not guilty.

16 The Defendant has been arraigned
17 and has entered a plea of not guilty which
18 is a complete denial making it necessary
19 for the prosecution, acting through the
20 prosecuting attorneys, to prove beyond a
21 reasonable doubt the case against the
22 Defendant. And until and unless this is
23 done, the presumption of innocence
24 prevails. Everyone agree with me that they
25 can follow that principle of law? All

1 right, very good.

2 Now, have any of you or any member
3 of your family or close friend, to your
4 knowledge, ever been charged for or charged
5 with an offense similar to the ones
6 involved in this case; that would be
7 Aggravated Arson and Endangering Children?
8 Okay. And Juror number 59?

9 JUROR #59: (Juror nodding head up
10 and down.)

11 THE COURT: And do you recall --
12 again, keeping in mind you have the right
13 to a sidebar.

14 JUROR #59: It was my cousin. It
15 was child endangerment.

16 THE COURT: Okay.

17 JUROR #59: It was probably back
18 in the '80s. I mean, I would have been in
19 junior high, I really don't remember.

20 THE COURT: Do you recall what the
21 outcome of that charge was?

22 JUROR #59: I think she was found
23 guilty.

24 THE COURT: All right. Now, is
25 there anything about your cousin's case,

1 keep in mind that they're different than
2 the case and the facts before us, that
3 would cause you to believe that you could
4 not be fair or impartial in this case?

5 JUROR #59: No, I would be fair
6 and open-minded.

7 THE COURT: Okay. Thank you very
8 much.

9 Anybody else have any sort of
10 circumstances similar to that? All right.

11 Have you or any member of your
12 family or any close friends, to your
13 knowledge, ever been a complaining witness
14 or a victim in a case similar to the one
15 that we're here for today? Okay. Very
16 good.

17 Now, have any of you or any member
18 of your family or any close friend, to your
19 knowledge, had any law enforcement training
20 or experience or been a member of or
21 employed by a law enforcement agency? And
22 by law enforcement agency I mean any police
23 department, sheriff's office, Highway
24 Patrol, District Attorney's office, City
25 Attorney's office, Attorney General's

1 office, United States Attorney's office,
2 FBI, anything like that? Anybody have a
3 family member, friend? Okay.

4 Let's start up here in the box.
5 And are you Juror number 81; is that
6 correct?

7 JUROR #12: 12.

8 THE COURT: 12, okay. And
9 who -- how do you think this question
10 applies to you?

11 JUROR #12: Well, my sister is --
12 she works for the CIA.

13 THE COURT: Okay.

14 JUROR #12: But she is retired.

15 THE COURT: Which is a relief to
16 you, huh?

17 JUROR #12: Yes.

18 THE COURT: Okay. And is there
19 anything about your sister's experience in
20 the CIA, your knowledge of what she did, or
21 your opinion of law enforcement in general,
22 that would cause you to believe you could
23 not be fair and impartial in this case?

24 JUROR #12: No.

25 THE COURT: All right. And,

1 again, I indicated that there are both city
2 police officers and people from the fire
3 department involved in this case. Do you
4 believe you can put your knowledge, your
5 relationship with your sister aside and be
6 a fair and impartial juror?

7 JUROR #12: Yes, yes.

8 THE COURT: Would the fact that
9 any of the witnesses involve law
10 enforcement, would any of that fact cause
11 you to believe their testimony just because
12 of the nature of their employment?

13 JUROR #12: Yes.

14 THE COURT: It would?

15 JUROR #12: No. No, ma'am, I'm
16 sorry. No, none.

17 THE COURT: Very good. Thank you.

18 Let's go to the first row.
19 Anybody have any knowledge or relationship
20 with law enforcement? All right. We'll
21 start down here and work our way down.

22 And you are Juror number 30?

23 JUROR #30: Yes. My cousin was
24 married to the deceased Sheriff
25 Papadopoulos's brother.

1 THE COURT: Okay. To his -- I
2 need a chart for that one. But -- so she
3 was married to the brother of the sheriff?

4 JUROR #30: Right.

5 THE COURT: Okay. Anything
6 about your knowledge --

7 JUROR #30: It would not influence
8 me in any way whatsoever.

9 THE COURT: Okay. You believe you
10 can be fair and impartial?

11 JUROR #30: Right.

12 THE COURT: All right. And first
13 row again. Juror number 33?

14 JUROR #33: Yes.

15 THE COURT: And how do you think
16 that question applies to you?

17 JUROR #33: My husband is a
18 retired police officer and he also retired
19 from the United States Marshal's office.

20 THE COURT: You, too, are relieved
21 I'm sure.

22 JUROR #33: Oh, yeah.

23 THE COURT: And given his
24 employment and given his experience, do you
25 believe that you can be fair and impartial

1 in this case?

2 JUROR #33: Absolutely.

3 THE COURT: All right. And you
4 can put aside anything that he may have
5 told you about evidence or anything like
6 that and apply the law only as I give it to
7 you and the facts as you find them?

8 JUROR #33: Absolutely.

9 THE COURT: And the fact that law
10 enforcement is involved as witnesses in
11 this case, would you automatically give
12 their testimony more weight than anybody
13 else just based upon your husband's
14 experience?

15 JUROR #33: No.

16 THE COURT: Okay. Thank you.

17 All right. And again in the front
18 row, and you're Juror number 38?

19 JUROR #44: 44.

20 THE COURT: I'm sorry, I missed
21 it?

22 JUROR #44: 44.

23 THE COURT: 44. Okay. And how
24 does this question apply to you?

25 JUROR #44: My brother-in-law's a

1 police officer.

2 THE COURT: And where is he a
3 police officer?

4 JUROR #44: In Tallmadge.

5 THE COURT: Given your
6 relationship with your brother-in-law and
7 things that he may have told you about what
8 evidence is and what the law is, can you
9 put all that aside and be a fair and
10 impartial juror in this case?

11 JUROR #44: Uh-huh.

12 THE COURT: Okay. Can you apply
13 the law only as I give it to you and not as
14 any idea or belief that has been expressed
15 to you about what the law is?

16 JUROR #44: Yes.

17 THE BAILIFF: I think there was
18 some responses in the box that you missed,
19 Your Honor.

20 THE COURT: Okay. I will come
21 back. But thank you for bringing that to
22 my attention.

23 Would you automatically give a law
24 enforcement officer's testimony more
25 credibility just based upon the fact that

1 they are a law enforcement officer?

2 JUROR #44: Uh-huh.

3 THE COURT: You would?

4 JUROR #44: Uh-huh.

5 THE COURT: Okay. Given that law
6 enforcement is involved in this case, do
7 you believe that you could not be fair and
8 impartial?

9 JUROR #44: No.

10 THE COURT: No?

11 JUROR #44: I mean, I could be
12 fair, yes.

13 THE COURT: Okay. You could be
14 fair, but you believe that you would tend
15 to view the law enforcement's testimony --

16 JUROR #44: I'm sorry, I
17 misunderstood.

18 THE COURT: Because I asked it
19 awkwardly I'm sure. So you could be fair
20 and impartial in this case, apply the law
21 as I give it to you? And the fact that law
22 enforcement will give testimony, you won't
23 automatically give their testimony
24 automatic credibility just because of what
25 they do?

1 JUROR #44: Right.

2 THE COURT: Okay. Thank you.

3 Anybody else in the front row?

4 How about the back row? Whoa, all right.

5 Is it Juror number 75?

6 JUROR #75: Yes.

7 THE COURT: Okay. And what's

8 your -- how do you believe that question

9 applies to you?

10 JUROR #75: I have two uncles, one
11 with a law background, he's an attorney,
12 and the other I think is a detective or on
13 their way to becoming a detective.

14 THE COURT: All right. Now, with
15 respect to the attorney, is he an attorney
16 in Stark County?

17 JUROR #75: I believe so. Or he
18 used to be. I think he -- I'm not sure of
19 his title now, but he used to be.

20 THE COURT: And do you know his
21 name?

22 JUROR #75: Mike Puterbaugh.

23 THE COURT: Okay. And the
24 relative who is a detective, is he a
25 detective in Stark County?

1 JUROR #75: No, Ellet.

2 THE COURT: He's where?

3 JUROR #75: Ellet. No, he's not
4 Stark County.

5 THE COURT: Okay. So is he in
6 Ohio?

7 JUROR #75: Yes.

8 THE COURT: Now, with respect to
9 that and your knowledge and your
10 relationship with those individuals, do you
11 believe you could be fair and impartial in
12 this case?

13 JUROR #75: Yes.

14 THE COURT: Do you -- will you
15 automatically give law enforcement
16 testimony automatic credibility just
17 because of what they do and your knowledge?

18 JUROR #75: No.

19 THE COURT: All right. Thank you.
20 And Juror number 76?

21 JUROR #76: (Juror nodding head up
22 and down.)

23 THE COURT: My same questions to
24 you, how do you believe this question
25 applies?

1 JUROR #76: My brother was Chief
2 of Police. He's retired now.

3 THE COURT: And where was that?

4 JUROR #76: Beach City.

5 THE COURT: Beach City. And is
6 there anything about your relationship with
7 your brother-in-law [sic] that would cause
8 you to believe that you could not be a fair
9 and impartial juror?

10 JUROR #76: No.

11 THE COURT: And you would agree
12 with me that you would not automatically
13 give law enforcement testimony automatic
14 credibility just because they're in law
15 enforcement?

16 JUROR #76: No.

17 THE COURT: All right. Very good.
18 And Juror number -- I think the whole
19 entire row. Juror number 78?

20 JUROR #78: I didn't.

21 THE COURT: Oh, you might be the
22 only one. Okay. How about 81?

23 JUROR #81: Yeah. I literally
24 spent three weeks in the Ohio Peace
25 Officers training.

1 THE COURT: Okay. Is there
2 anything about your experience in that,
3 going through that process, that you
4 believe that you could not be a fair and
5 impartial juror in this case?

6 JUROR #81: No.

7 THE COURT: And can you agree with
8 me that you will apply the law as I give it
9 to you and not the law that was given to
10 you at the Peace Officers Training Academy,
11 or as you recall it?

12 JUROR #81: I can agree.

13 THE COURT: Okay. And as with the
14 other folks, is there anything about your
15 relationship with maybe any of the officers
16 that you became friends with through that
17 training that you believe that you would
18 automatically give automatic credibility to
19 a law enforcement officer just because of
20 what they do?

21 JUROR #81: No.

22 THE COURT: Okay. Very good. And
23 you believe you could be fair and impartial
24 in this case?

25 JUROR #81: Yes.

1 THE COURT: Very good. And Juror
2 number 83?

3 JUROR #83: Yes.

4 THE COURT: How do you believe
5 this question applies to you?

6 JUROR #83: I have a friend and a
7 coworker that are both cops.

8 THE COURT: All right. Are they
9 in Stark County?

10 JUROR #83: The coworker, I don't
11 know where she works. My friend is in
12 Stark County, though.

13 THE COURT: Okay. And is there
14 anything about your relationship with
15 either your friend or your coworker there
16 that would cause you to automatically
17 believe the testimony of any law
18 enforcement officer just because of what
19 they do?

20 JUROR #83: No.

21 THE COURT: And you believe you
22 could be fair and impartial in this case?

23 JUROR #83: Yes, I do.

24 THE COURT: And Juror number 85,
25 did you have your hand up too?

1 JUROR #85: No.

2 THE COURT: No? Okay, very good.

3 Now, I appear to have missed some people up
4 here. Okay, let's start with Juror number
5 16?

6 JUROR #16: My husband's nephew
7 works for the CIA.

8 THE COURT: Okay. Is there
9 anything about your relationship with your
10 husband's nephew that would cause you to
11 believe that you would not be able to be
12 fair and impartial in this case?

13 JUROR #16: No.

14 THE COURT: And, again, would you
15 tend to believe the testimony of any police
16 officer just based upon what they do?

17 JUROR #16: No.

18 THE COURT: Okay, very good. And
19 Juror number 21?

20 JUROR #21: I have an uncle that's
21 a retired Chief of Police from Uniontown.
22 And I have a brother-in-law that is
23 currently on the Marlboro -- Marlinton, I
24 guess, Police Department. My father is a
25 firefighter at Marathon Refinery, on their

1 ERT team. I'm supposed to start on the ERT
2 team, in their refinery team, in June.

3 THE COURT: Oh, okay. Is there
4 anything, aside from what you've already
5 stated, that based upon these relationships
6 that you have that you believe that this
7 would not be a good case for you to be a
8 juror?

9 JUROR #21: Not that part of it,
10 no.

11 THE COURT: Okay. So just based
12 upon your prior answers, you believe you
13 could not be fair and impartial, but this
14 part --

15 JUROR #21: This part, no.

16 THE COURT: -- you would be okay
17 with?

18 JUROR #21: Yeah.

19 THE COURT: Would you tend to
20 believe the testimony of any law
21 enforcement officer or anyone with the fire
22 department just because of the nature of
23 what they do?

24 JUROR #21: No.

25 THE COURT: Okay. Very good.

1 Thank you.

2 Anybody else in the box that I
3 might have missed? Okay. Anybody -- here
4 we go.

5 JUROR #35: I wanted to go back
6 towards the last question. You kind of
7 moved past before I raised my hand.

8 THE COURT: Oh, sure.

9 JUROR #35: There was an
10 acquaintance in school that's been charged
11 with arson. He lit the fire to a
12 commonplace in the dormitory.

13 THE COURT: Okay. And you are
14 Juror number?

15 JUROR #35: 35.

16 THE COURT: 35?

17 JUROR #35: Yes. He was accused
18 of that anyhow.

19 THE COURT: Is there anything
20 about your knowledge of that charge or what
21 you have been going through with that
22 charge that would cause you to believe that
23 you could not be fair and impartial in this
24 case?

25 JUROR #35: No.

1 THE COURT: And is there any
2 understanding about the law that applies in
3 that case or the facts that apply in that
4 case that -- and your understanding of that
5 that would cause you to follow that law as
6 opposed to the law in which I give you in
7 this case and the facts in which you are to
8 apply?

9 JUROR #35: No.

10 THE COURT: Okay. And you believe
11 you could be fair and impartial?

12 JUROR #35: Yes.

13 THE COURT: Okay. And somebody
14 else had their -- okay. And you're Juror
15 number 76?

16 JUROR #76: Yeah.

17 THE COURT: Okay. And what -- do
18 you have something to add to your
19 original --

20 JUROR #76: As far as the fire
21 department, I didn't realize you asked
22 about the fire department. I have a son
23 and daughter-in-law and a coworker on the
24 fire department.

25 THE COURT: Okay. Now, is there

1 anything about your relationship with them
2 that would cause you to automatically
3 believe the testimony of anybody from a
4 fire department just because of the nature
5 of what they do?

6 JUROR #76: No.

7 THE COURT: And with the
8 understanding there will be people from the
9 fire department testifying, you believe
10 that you could be fair and impartial in
11 this case?

12 JUROR #76: (Juror nodding head up
13 and down.)

14 THE COURT: Okay. And maybe I
15 should have done that to begin with, to
16 expand it upon to include all fire
17 departments. Does that change anybody's
18 response, or anybody have anything they
19 want to add? Okay.

20 Now, again, this is sort of
21 directed towards everybody because it -- I
22 really only asked it of people who had a
23 relationship, but would all of you be able
24 to listen to the testimony of a police
25 officer, or any peace officer, and measure

1 it by the same standards that you would use
2 to test the credibility of any other
3 witness? Okay.

4 Would you have any difficulty or
5 embarrassment in returning a verdict for or
6 against the side which had a police officer
7 or other peace officer, including fire
8 departments, as witnesses? Okay.

9 Have you or any member of your
10 family or close friend, to your knowledge,
11 had any experience as an attorney or
12 working in a law office or any office of
13 any court? Anybody work for an attorney or
14 work for the court? Okay.

15 Again, do any of you know or are
16 any of you related to any of the parties to
17 this case or to any of the attorneys who
18 represent them?

19 Okay. Do any of you know anyone
20 in the court system? Anybody know me, and
21 I apologize if I don't recognize you, my
22 bailiff or Magistrate, the court reporter,
23 any court personnel, or Clerk's office
24 personnel? Okay.

25 Now, it's important that I have

1 your assurance that you will, without
2 reservation, follow my instructions and
3 rulings on the law and will apply that law
4 to this case. To put it somewhat
5 differently, whether you approve or
6 disapprove of my rulings or instructions,
7 it's your solemn duty to accept, as
8 correct, these statements of law. You may
9 not substitute your own idea of what the
10 law is or what you think it ought to be.

11 Will all of you follow the law as
12 given to me -- given to you by me in this
13 case? Everybody will agree with me that
14 they can do that? Okay.

15 Now, this sometimes arises, kind
16 of unique to our county, but are any of you
17 related to anybody on the panel, or do any
18 one of you know anybody else who's on the
19 panel with you? So just take a look around
20 and see if you recognize anyone, familiar
21 with anyone. Okay. Oh, okay, Juror number
22 55?

23 JUROR #55: I know 53.

24 THE COURT: You know Juror number
25 53? And 53, you know Juror number 55?

1 Okay. Will it create any problem, your
2 relationship or knowledge of each other, if
3 you serve on the same jury?

4 JUROR #53: (Juror shaking head
5 from side to side.)

6 JUROR #55: (Juror shaking head
7 from side to side.)

8 THE COURT: Okay. And would you
9 be offended if either one of you are
10 excused for whatever reason?

11 JUROR #55: No.

12 THE COURT: No? Okay. Very good.

13 Anyone else? Okay, Juror number
14 28 and who --

15 JUROR #6: 28.

16 THE COURT: You recognize -- okay.
17 Juror number 28, and is it Juror number 6?

18 JUROR #6: Right.

19 THE COURT: Okay. Same questions,
20 will there be any problem if the two of you
21 are seated on the same jury?

22 JUROR #6. No.

23 JUROR #28: No.

24 THE COURT: No? Okay. And will
25 either of you be offended if the other one

1 is excused from service?

2 JUROR #28: No.

3 JUROR #6: No.

4 THE COURT: No? Very good.

5 The Court is going to instruct you
6 as to the burden of proof, and I've kind of
7 given you a brief description of the
8 differences between a civil burden of proof
9 and a criminal burden of proof, required to
10 prove the issues and the facts of this
11 case. Is there any one of you that cannot
12 follow the instructions of the Court in
13 that respect? All right.

14 In arriving at a verdict in this
15 case, is there any one of you that cannot
16 lay aside such matters as race, religion,
17 or sympathy? None of these are to have any
18 effect on your deliberations in this case.
19 Okay.

20 Now, do you know of any other
21 reason, because sometimes I don't ask all
22 the right questions, or has anything
23 occurred during this question period, other
24 than what's already been stated, that makes
25 you think that you doubt whether or not you

1 could be completely fair and impartial as a
2 juror in this case, or if there's some
3 reason why you believe that you should not
4 be a juror in this case, again, other than
5 what's already been stated? All right.

6 At this time the parties are going
7 to ask you questions. The Plaintiff will
8 address you first. So, Attorney Barr.

9 MR. BARR: Thank you, Your Honor.

10 May it please the Court, Ms.
11 Schnellinger, counsel for Defendant. Good
12 morning again, folks. As I told you
13 earlier, my name is Dennis Barr and I work
14 for the Stark County Prosecutor, John
15 Ferrero, as does Ms. Schnellinger. And we
16 represent the State of Ohio and the
17 citizens of Stark County throughout these
18 proceedings.

19 First off, I just want to ask you
20 real quick, does anybody know anybody that
21 works in the Stark County Prosecutor's
22 office? Okay, good.

23 I'm going to do -- I'm sorry, did
24 you raise a hand?

25 JUROR #49: Yeah. Currently?

1 MR. BARR: Currently, or even in
2 the past.

3 JUROR #49: Yeah, a friend of
4 mine.

5 MR. BARR: Who would that be?

6 JUROR #49: Chris Newlon.

7 MR. BARR: Chris Newlon, okay.
8 That's how I've seen you before, okay.

9 JUROR #49: Yeah.

10 MR. BARR: Is there anything about
11 that relationship that, you know, Chris
12 used to work for us --

13 JUROR #49: No.

14 MR. BARR: -- and anything that's
15 going to cause you to be unable to be fair
16 and impartial?

17 JUROR #49: No.

18 MR. BARR: No? And your number
19 again, sir?

20 JUROR #49: 49.

21 MR. BARR: Okay. Thank you.

22 THE COURT: Mr. Barr, you also had
23 one right there, too.

24 MR. BARR: Right here? Okay.
25 Your number?

1 JUROR #38: Through my work, I've
2 worked with several of the Prosecutors in
3 the office, Katie Chawla.

4 MR. BARR: And you work up at
5 Akron Children's Hospital, right?

6 JUROR #38: I do.

7 MR. BARR: And your number, ma'am?

8 JUROR #38: 38.

9 MR. BARR: 38, okay. Is there
10 anything about that relationship that as
11 you're sitting there now saying, well, I
12 can't be fair and impartial in this case?

13 JUROR #38: No.

14 MR. BARR: Okay. You can set that
15 aside?

16 JUROR #38: Yes.

17 MR. BARR: Thank you very much.
18 Anybody else?

19 I'm going to do some questioning
20 myself and I'm going to try to be as brief
21 as possible. And I want to mostly talk
22 about some principles of law that apply to
23 every criminal case that's tried in the
24 State of Ohio. And I want to talk to you
25 about your views and your attitudes about

1 those principles of law. And I want to
2 apologize because I'm going to kind of ask
3 my questions this way, have to turn my back
4 on you folks, and that's kind of rude, and
5 I apologize for that. So if you can't hear
6 me, throw something at me or holler my name
7 so I speak up a little bit, okay?

8 And, again, just like the Judge
9 said, we're not here to pry into your
10 personal lives or to embarrass you. We
11 come in here with one simple goal in mind,
12 and that's to put 12 or 14 people in this
13 box that can be fair and impartial. And
14 that means fair and impartial to the
15 Defendant, because she's the person on
16 trial, but it also means that you are to be
17 fair and impartial to the State of Ohio
18 because both sides deserve a jury of fair
19 and impartial people. And that's the only
20 reason behind this questioning.

21 It's also important that you know
22 now that there are no correct answers.
23 Okay. Can't say anything wrong, so don't
24 be afraid to say anything if something
25 comes up and you're sitting there thinking,

1 wow, that just doesn't sit right with me,
2 raise your hand and we'll talk about it.
3 And maybe we can allay your fears, and
4 maybe we can't. And if we can't, maybe
5 you'll be asked to be excused. That
6 doesn't mean you're a bad person, just
7 means that maybe this isn't the case for
8 you. But you can't say anything wrong. So
9 if something is sitting there bothering you
10 that we talked about, raise your hand and
11 we'll try to fix it. And if we can't, then
12 we'll settle it some other way.

13 And as when the Judge said that if
14 you want to talk about it in private, raise
15 your hand, we'll come up here and talk
16 about it in private. Only those of us in
17 the conversation will know what we talked
18 about.

19 How many of you all watch TV; Law
20 & Order, CSI, and all that stuff? Okay.
21 Have you all figured out by now that this
22 ain't television? Because you've been here
23 an hour, and the show would be over. Okay.
24 But sometimes I worry that juries watch
25 those things and they think they're real,

1 that those little gadgets they have on CSI
2 really exist. Do you all understand that's
3 Hollywood? That maybe some of that stuff
4 exists, but they take it a little bit
5 further and make it a little more -- more
6 interesting so you'll watch the show.

7 Is anybody going to hold us to
8 those burdens that you see on television?
9 You understand this is the reality series,
10 this isn't TV? Everybody okay with that?

11 The Judge talked to you a little
12 bit about the burden of proof, and I want
13 to talk a little bit about it too. The
14 burden of proof is proof beyond a
15 reasonable doubt. That is the highest
16 burden of proof in our criminal justice
17 system, and it ought to be. Ought to be a
18 very high burden. And at some point in
19 time she's going to read you all the
20 precise legal definition of proof beyond a
21 reasonable doubt. And I want you to listen
22 to it very, very carefully, because when
23 you hear it what you're not going to hear
24 is it's proof beyond all doubt, it's proof
25 beyond a shadow of a doubt, it's proof

1 beyond every doubt. That is not proof
2 beyond a reasonable doubt. It's proof
3 beyond a reasonable doubt. It's not an
4 impossible burden. It's a high burden, but
5 it's not impossible.

6 Juror number 13, sir, let me ask
7 you this: Would you agree with me, sir,
8 that the best way for you to know what
9 happened in any given situation is to see
10 it with your own two eyes?

11 JUROR #13: Probably would be.

12 MR. BARR: Probably would be?

13 JUROR #13: Uh-huh.

14 MR. BARR: You were there and you
15 saw it --

16 JUROR #13: Yeah.

17 MR. BARR: -- and you wouldn't
18 have any doubt at all about what you saw,
19 would you?

20 JUROR #13: No.

21 MR. BARR: Okay. On October 3rd,
22 2012, about 8:00 until about 8:30 in the
23 evening, were you anywhere near 185 26th
24 Street Southeast in Massillon, Ohio?

25 JUROR #13: No, sir.

1 MR. BARR: You weren't around,
2 were you?

3 JUROR #13: No.

4 MR. BARR: So you didn't see what
5 happened, did you?

6 JUROR #13: Nope.

7 MR. BARR: So it would be nearly
8 impossible for us, as Prosecutors, to erase
9 all doubt from your mind or prove anything
10 beyond a shadow of a doubt or beyond all
11 doubt; wouldn't it?

12 JUROR #13: Would be.

13 MR. BARR: Everybody agree with
14 that? Everybody understand now why the law
15 requires proof beyond a reasonable doubt?
16 That's our burden. We want you to hold us
17 to that, okay, but we don't want you to
18 take us beyond that because a lot of times
19 people say, oh, it's got to be beyond a
20 shadow of a doubt, or all doubt. That's
21 not our job here. Everybody understand
22 that? Everybody going to hold us to that
23 burden?

24 Let's think about it this way, how
25 many of you have children? Okay. All

1 right. Juror number 6, sir, when you
2 decided to have that first child, did you
3 talk about it with your significant other;
4 spouse, wife, whatever?

5 JUROR #6: Yes.

6 MR. BARR: Okay. Did you have
7 some doubts whether it was time to have a
8 child?

9 JUROR #6: Well, my children are
10 grown, they're in their 40s.

11 MR. BARR: Okay. But I'm trying
12 to get you to think back to that moment
13 when you decided to have that first child.
14 It was a big moment in your life; wouldn't
15 you agree?

16 JUROR #6: Yes.

17 MR. BARR: And did you and your
18 wife or the --

19 JUROR #6: Yeah, my wife.

20 MR. BARR: It was your wife?
21 Okay. You never know these days, you know.
22 But did you guys discuss that and say, hey,
23 I think it's time, let's try to have a
24 child?

25 JUROR #6: We just had a child.

1 MR. BARR: Just had it? Okay.

2 All right. Anybody recall having a
3 discussion about that time in your life?
4 Juror number -- I think you're 21, right?

5 JUROR #21: Correct.

6 MR. BARR: Okay. Big moment in
7 your life?

8 JUROR #21: Big moment.

9 MR. BARR: Wanted to make sure
10 everything was in place and you were ready
11 for it, right?

12 JUROR #21: Correct.

13 MR. BARR: And did you discuss
14 that?

15 JUROR #21: Yes, we did.

16 MR. BARR: Okay. And did you use
17 reason and common sense and your life's
18 experiences to come to that conclusion?

19 JUROR #21: Sure.

20 MR. BARR: And in doing that, did
21 you erase all the reasonable doubts that
22 you had about it?

23 JUROR #21: Most of them.

24 MR. BARR: Most of them?

25 JUROR #21: You always have a

1 little fear.

2 MR. BARR: Sure. But you didn't
3 worry about flying monkeys coming down from
4 the Wizard of Oz, or anything like that; is
5 that right?

6 JUROR #21: Did not.

7 MR. BARR: You looked at where you
8 were in your life, used your common sense,
9 and said, yeah, now is the time?

10 JUROR #21: Right.

11 MR. BARR: Okay. So you erased
12 all the reasonable doubts?

13 JUROR #21: Right.

14 MR. BARR: And went ahead and did
15 it, right?

16 JUROR #21: Right.

17 MR. BARR: Well, that's what we
18 ask you folks to do as jurors. Okay, use
19 your reason, use your common sense, use
20 your life's experiences, and decide, at the
21 end of this case, after you've heard all
22 the evidence and the Judge gives you the
23 law, that the State's proven the case
24 beyond a reasonable doubt. Are you all
25 willing to accept that responsibility?

1 Aggravated Arson, serious crime,
2 but you know that if I was up here trying a
3 theft case with Ms. Schnellinger, the
4 burden of proof would be exactly the same.
5 Does everybody understand that? It doesn't
6 change because the crime sounds more
7 serious. Everybody agree with that?
8 Excuse me, I think I'm getting a little bit
9 of what's going down -- or around here so.

10 Now the Judge also read to you the
11 indictment. And this is the indictment.
12 And when we, as Prosecutors, get this
13 indictment, we have to do -- we have to
14 break it down into what's referred to as
15 the elements of the crime. I could read
16 you this indictment, it's got a lot of
17 flower -- flower -- flowery language and
18 legalese in it, but we break it down into
19 the simple elements because that's what we
20 have to prove beyond a reasonable doubt.

21 And in this case those elements,
22 with respect to Aggravated Arson, are
23 jurisdiction and identification. That
24 means it happened here in Stark County so
25 you all can hear the case, that means that

1 Kayla Ayers is the person that did it, and
2 it means we have to prove that she
3 knowingly, by means of fire, caused
4 physical harm to 185 26th Street Southeast
5 which was an occupied structure. Those are
6 the elements of arson that we -- aggravated
7 arson that we have to prove beyond a
8 reasonable doubt.

9 And with respect to child
10 endangering, it's jurisdiction. Again,
11 that it happened here so you all can try
12 [sic] it. Identification, that she's the
13 person that did it. And that she
14 recklessly, being the parent of children
15 under 18, created a substantial risk to the
16 health or safety of those children by
17 violating a duty of care, protection, or
18 support. Those are the elements of child
19 endangering.

20 Now, what didn't I say? What
21 element is missing from all of those
22 elements? How about motive? Because
23 everybody always wants to know why somebody
24 did something, right? Well, you know what,
25 the Judge is going to tell you, we don't

1 have to prove motive. And, again, think
2 about it this way, use reason, common
3 sense, and your life's experiences.

4 How many of you all, besides
5 myself, have gotten a speeding ticket? I
6 know it's a little embarrassing. How many
7 have gotten one? Okay. Did anybody fight
8 that ticket? Go to court and say, darn it,
9 I wasn't speeding? Anybody do that? No?
10 You all signed the ticket, sent it in, paid
11 your fine.

12 Well, let's assume this. Juror
13 number 27, I'm going to ask you a couple
14 questions. Let's assume you wanted to
15 fight that ticket, that you thought you
16 weren't speeding, okay? So you go to
17 court, show up in court, and you would
18 expect a police officer to be there, right?

19 JUROR #27: (Juror nodding head up
20 and down.)

21 MR. BARR: And you would expect
22 that police officer to have to take the
23 stand and testify that he was in his duly
24 marked patrol car, using his duly
25 calibrated radar, and that the speed limit

1 was 35 miles an hour and his radar clocked
2 your vehicle going 45 miles an hour, and
3 that it happened here in Stark County,
4 Ohio. You would expect him to have to say
5 that stuff, wouldn't you --

6 JUROR #27: Yes.

7 MR. BARR: -- to prove that you
8 were speeding, right? Would you expect him
9 then to have to say, And, Your Honor, when
10 I walked up to the window to talk to the
11 gentleman driving the car, he rolled his
12 window down and he said, I got to get home
13 because my wife's pregnant and she's having
14 a baby, would you expect him to have to say
15 that?

16 JUROR #27: No, not unless that
17 was a fact of the situation.

18 MR. BARR: He wouldn't have to say
19 that because he doesn't have to prove why
20 you're speeding, does he? He just has to
21 prove, this is the speed limit, this is how
22 fast you were going, and this is how I
23 determined it, right?

24 JUROR #27: Yep.

25 MR. BARR: Do you agree with that?

1 JUROR #27: Yeah.

2 MR. BARR: No motive. Same thing
3 here. That means you can listen to all
4 this evidence, you can go back into that
5 jury room and apply the law that the Judge
6 gives you, and you can find Kayla Ayers
7 guilty as charged in both counts and walk
8 out of here and be scratching your head and
9 saying, gee, I wonder why she did that.
10 And if you are, that doesn't mean we
11 failed, do you understand that, that that
12 is not a burden that is imposed by the
13 State of Ohio in any criminal case.
14 Everybody understand that? Everybody back
15 here? Everybody willing to accept that?

16 There's another thing we can't do,
17 and the Judge touched upon this, but I want
18 to touch upon it again, and that is that
19 this courtroom is no place for sympathy or
20 prejudice or bias. Okay. You're going to
21 hear that Kayla is a young woman with three
22 children. And you're going to hear
23 evidence that Kayla Ayers set a fire. And
24 I submit to you the State of Ohio is going
25 to prove beyond a reasonable doubt that

1 she's guilty of all these charges. And
2 when we do, you can't go back there and
3 say, you know what, the State has proven
4 its case, but, gosh, she's a young woman
5 and she's got three kids and we can't find
6 her guilty. Do you understand you cannot
7 do that, folks? Absolutely cannot do that.
8 Can you all promise the State of Ohio
9 you'll set that aside?

10 There's a number of ways that we
11 prove cases. One is through the use of
12 physical evidence, and that's stuff you can
13 see, you can feel, you can touch, you can
14 carry with you back into that room to
15 assist you in your deliberations, and
16 you'll see some in this case.

17 And there's also this thing called
18 circumstantial evidence. And I like to
19 explain it to you this way: Let's say that
20 you live here in Ohio and neither of
21 your -- none of your neighbors have snow
22 machines to make snow. So it's a December
23 night and you're going to go to bed and you
24 close the back curtains, and you notice as
25 you close the curtains, you comment to

1 yourself, gee, it's December 5th and it
2 hasn't even snowed yet, what a great
3 winter. You close the curtains and you go
4 to bed. Wake up the next morning and you
5 open those windows and there's a fresh
6 blanket of snow and there's some footprints
7 across your backyard.

8 Now, you were sleeping and you
9 open that window, and when you do open that
10 window, Juror number 24, what can you infer
11 from opening that window happened while you
12 were sleeping?

13 JUROR #24: It snowed.

14 MR. BARR: It snowed. And you see
15 the footprints, so what happened there?

16 JUROR #24: Someone was on the
17 property.

18 MR. BARR: Somebody walked through
19 your property, right? You didn't see it
20 happen, though, did you? But from that
21 evidence that you were given, you're
22 allowed to make those inferences; aren't
23 you? Okay. That's what circumstantial
24 evidence is, folks. It can be a piece of
25 physical evidence, it can be testimony that

1 you hear from this witness stand and you're
2 allowed to make inferences from it. The
3 Judge is going to tell you that. Everybody
4 comfortable with the concept of
5 circumstantial evidence?

6 Now, the Judge is also going to
7 tell you this: In the State of Ohio, the
8 law says that direct evidence, which is
9 evidence you hear here from the witness
10 stand, and circumstantial evidence are of
11 equal weight. They both have the same
12 value in this courtroom. Do you all
13 understand that?

14 Now, of course, you're the ones
15 that are going to make the inferences when
16 the push comes to shove. We're going to
17 argue what they ought to be, but it's your
18 decision in the end. But do you understand
19 that they are of equal weight? Can you all
20 apply equal weight to circumstantial
21 evidence and direct evidence? Will you all
22 do that? Everybody back here do that?

23 And the final way is through what
24 we call direct evidence. This is the big
25 job that we ask you all to do, and the

1 Judge has touched on it a little bit, but
2 direct evidence is from witnesses, and
3 they're going to walk in here, they're
4 going to sit in this chair, they're going
5 to raise their right hand, they're going to
6 take an oath, and they're going to tell you
7 what they heard or what they saw or what
8 they did in regards to October 3rd of 2012
9 in this case. And your job is to listen to
10 them and your job is to judge their
11 credibility because the Judge will tell you
12 that you can believe any part of a
13 witness's testimony, all of a witness's
14 testimony, anything you want, basically,
15 based upon your assessment of their
16 credibility.

17 That sounds like an awesome
18 responsibility; doesn't it? Like a
19 daunting task. But, again, let's think
20 about it using reason and common sense and
21 our life's experiences. We aren't asking
22 you folks to do anything you haven't been
23 doing every day of your life since you were
24 able to understand and comprehend the
25 English language. Because if you go home

1 tonight and your friend calls you, or your
2 spouse says something to you, oh, you know
3 what I saw today, and you choose to believe
4 them, why do you believe them? Because you
5 find them credible, right? Everybody agree
6 to that? You do this every day. Now we're
7 just asking you to do it with strangers in
8 a courtroom. Everybody willing to accept
9 that responsibility?

10 Anybody sitting there saying right
11 now, okay, Mr. Barr, I know what you're
12 saying, but I can't be asked to do that, I
13 can't judge people's credibility? Anybody
14 feeling that way? The Judge will tell you
15 there's some tests you can use to judge
16 their credibility. She'll explain those to
17 you.

18 The Judge alluded to the fact that
19 trials are conducted by rules, and they
20 are. And we're lawyers and we know those
21 rules. And so at some point during this
22 trial there may be some things happen that
23 are called objections. There may be a
24 witness on the stand and I may ask a
25 question and they may object, or they may

1 be asking the questions and we may object.
2 And sometimes I wonder, gee, does the jury
3 think we're trying to hide things? Trying
4 to keep things from them? But you
5 understand there's rules?

6 And what we're doing when we're
7 objecting is basically saying, Judge,
8 under -- the rules under which we try cases
9 by, is that a fair and permissible
10 question? Can you imagine if we had to say
11 that instead of objection? So we say
12 "Objection." And that's all we're saying
13 when we say that. And then the Judge will
14 say "Overruled" in which case she's done
15 her job which is to decide what evidence
16 comes in, or "Sustained" in which case you
17 won't hear the answer.

18 One thing you can't do is if you
19 don't hear the answer, you can't say, gee,
20 I wonder what they would have said. I bet
21 they would have said this. You understand
22 you can't do that?

23 If we object ten times in this
24 trial and they never object, are you going
25 to hold that against us, the State of Ohio?

1 Anybody?

2 Let's switch it around. If they
3 object ten times and we never object, are
4 you going to hold it against the Defendant?
5 You understand those are just part of the
6 procedures that goes on?

7 Here's one of the toughest things
8 I think we could ever ask a jury to do.
9 And that is, sometimes the question's
10 asked, the answer's given, and then the
11 answer itself is objectionable and so we
12 object. And the Judge sustains -- or they
13 object, and the Judge sustains it, and then
14 she looks to you folks and she says, Ladies
15 and gentlemen of the jury, I instruct you
16 to disregard that answer. But you've
17 already heard it. And when she says that,
18 she means it. That means when you go back
19 in that room and you have the evidence and
20 you have the law, you can't sit back there
21 and say, you know what, I'm willing -- I'm
22 convinced beyond a reasonable doubt, but
23 remember that one answer the Judge told us
24 to disregard? I'm going to change my
25 verdict because of that. Do you understand

1 that you absolutely, positively cannot do
2 that, folks? If Judge Farmer tells you you
3 are to disregard an answer, you must not
4 let that answer be a factor in your
5 deliberations. Can you all promise us
6 you'll do that?

7 I got a couple individual
8 questions for you. And, again, I'm not
9 picking on you, but sometimes the Judge
10 doesn't go far enough in the questioning to
11 make us feel comfortable. And I want to
12 start out with Juror number 27. Sir, you
13 said you're okay today and tomorrow, but if
14 it gets into Wednesday, it's going to kind
15 of be a little bit of pressing on your
16 mind?

17 JUROR #27: It makes it difficult,
18 yeah.

19 MR. BARR: Okay. Let me ask you
20 this, I think you'll get this case sometime
21 tomorrow, but as long as it takes a jury to
22 come up with a verdict, nobody can tell.
23 So let's say you get this case tomorrow
24 afternoon sometime and you're back there
25 deliberating and it gets close to the time

1 you would be going home and you guys
2 haven't reached a verdict and we may have
3 to bring you back Wednesday morning. Let's
4 say that you're the only one that isn't
5 agreeing with the 11 others, no matter
6 which way it is because it has to be
7 unanimous, okay? You know, it's 4:30 on
8 Tuesday and you don't really want to be
9 here Wednesday, but you really don't agree
10 with those other folks, you going to change
11 your mind just so you can get to work on
12 Wednesday?

13 JUROR #27: No.

14 MR. BARR: You wouldn't do that?

15 JUROR #27: No.

16 THE COURT: Okay. You can promise
17 me that?

18 JUROR #27: Yeah. You know, when
19 it's impacting people's lives, you know,
20 I'll stay.

21 MR. BARR: Okay. All right. And
22 you're okay today and tomorrow?

23 JUROR #27: Yeah.

24 MR. BARR: There's nothing on your
25 mind right now that you're sitting there

1 thinking, gee, I wish I was at work -- I
2 won't put it that way, I know you probably
3 wish you were at work. But that, you know,
4 is going to take your attention away from
5 what you hear here because while you're in
6 here these are the most important things?

7 JUROR #27: Yep.

8 MR. BARR: Thank you very much for
9 your honesty.

10 Now I have to put my glasses on
11 because I write real little when I'm in the
12 courtroom and I write real big when I'm
13 not.

14 Juror number 50, sir, you
15 indicated that you have some medical
16 appointments today and tomorrow?

17 JUROR #50: Yes.

18 MR. BARR: And they were pretty
19 difficult to get?

20 JUROR #50: They're difficult to
21 make. Once you get the appointments, you
22 know, they're set up.

23 MR. BARR: Right. What time's
24 your appointment today?

25 JUROR #50: 9:15.

1 MR. BARR: So you already missed
2 that one?

3 JUROR #50: Right.

4 MR. BARR: Okay. Okay. If you
5 have to miss the one tomorrow, is it going
6 to cause you any major problems?

7 JUROR #50: It won't except that,
8 you know, the procedure that they go
9 through would be interrupted.

10 MR. BARR: Okay. As you're
11 sitting here now, are you concerned about
12 missing that one tomorrow that you may not
13 be able to focus on the evidence?

14 JUROR #50: I can focus on the
15 evidence, but I am also concerned about --

16 MR. BARR: Missing your
17 medication?

18 JUROR #50: -- missing the
19 medication.

20 MR. BARR: And that makes you
21 drowsy?

22 JUROR #50: The one specific one
23 does, yes. I have about four to take.

24 MR. BARR: It's probably important
25 that you take that one that makes you

1 drowsy?

2 JUROR #50: Probably.

3 MR. BARR: Would it concern you if
4 you had to miss it?

5 JUROR #50: Well, there's specific
6 direction on the medicine not to
7 discontinue so it would concern me to miss.

8 MR. BARR: Okay. Would it concern
9 you enough that you would probably be
10 thinking about that instead of maybe
11 listening to the evidence?

12 JUROR #50: No.

13 MR. BARR: No? You're sure about
14 that?

15 JUROR #50: Yes.

16 MR. BARR: Okay. Thank you, sir.

17 Juror number 66, you indicated you
18 had a student by the name of Jeff Ayers?

19 JUROR #24: 24.

20 MR. BARR: 24. Why did I -- 24,
21 okay. I'm sorry about that.

22 The Jeff Ayers that is going to
23 testify I believe is from North Canton.

24 JUROR #24: Okay.

25 MR. BARR: Okay. And it's

1 probably not the same Jeff Ayers.

2 JUROR #24: Okay.

3 MR. BARR: But if it would be, you
4 heard the Judge say that let us know.
5 Would you do that?

6 JUROR #24: Sure.

7 MR. BARR: And if it is, I think
8 you've already told the Judge that it's not
9 going to be any problem with your ability
10 to be fair and impartial in listening to
11 the evidence, is that a fair statement?

12 JUROR #24: No, sir.

13 MR. BARR: Thank you, sir.

14 Juror number -- let me try and get
15 this number right -- 53, you know Jason?

16 JUROR #53: Yes.

17 MR. BARR: He's your niece's
18 husband's brother?

19 JUROR #53: Yes.

20 MR. BARR: How often do you see
21 him?

22 JUROR #53: It's been ten years,
23 eleven years maybe since I've seen him.

24 MR. BARR: So you don't see a lot
25 of him?

1 JUROR #53: No, they live in
2 Massillon, I live in Canton.

3 MR. BARR: So the fact that he's
4 somehow related to you, and I can't figure
5 that out, I just repeated what you said,
6 but it isn't going to cause you a problem?

7 JUROR #53: No.

8 MR. BARR: And you've never had
9 any bad blood between you and Mr. Pandrea
10 or anything like that?

11 JUROR #53: No.

12 MR. BARR: Thank you.

13 JUROR #53: You're welcome.

14 MR. BARR: Juror number 59 I think
15 knows Jennifer from high school. Is that
16 you?

17 JUROR #59: Yes.

18 MR. BARR: Okay. All right.

19 JUROR #59: I've lost my number,
20 I'm sorry.

21 MR. BARR: Sorry, I got one wrong
22 and I get paid to do this.

23 You know Jennifer from high
24 school? Did you guys hang out in high
25 school?

1 JUROR #59: No. I would know her
2 face simply.

3 MR. BARR: Just crossed in the
4 hallway? Never had a problem with her?

5 JUROR #59: No.

6 MR. BARR: So nothing about that
7 relationship is going to cause you to be
8 unable to be fair and impartial?

9 JUROR #59: No, sir.

10 MR. BARR: Okay. Thank you.

11 Juror number 75, your uncle,
12 Michael Puterbaugh, did Michael ever tell
13 you about the time he worked in our office?

14 JUROR #75: Vaguely. Nothing in
15 detail.

16 MR. BARR: Nothing in detail? So
17 there's nothing about anything that he said
18 that causes you to sit here and say, oh,
19 geez, I don't want to watch these
20 Prosecutors in action, I know things about
21 them that other people don't know?

22 JUROR #75: No.

23 MR. BARR: Nothing like that? All
24 right. So no problem sitting here and
25 being a juror?

1 JUROR #75: Right, no problem.

2 MR. BARR: Thank you.

3 One of those rules, ladies and
4 gentlemen, that we conduct these trials by
5 is this, this is our only chance to talk to
6 you. The rest of the time we're going to
7 talk at you. And when we see you in the
8 hallway, if you're selected as a juror,
9 we're not going to say, Hey, how you doing?
10 What about the Cavs? Or what's this
11 weather doing? We're not going to do that.
12 We're going to ignore you like we don't
13 know you. Not because we think we're
14 better than you, but I think you see the
15 logic. We shouldn't be talking to jurors
16 once they're seated. So this is my last
17 opportunity to talk with you. It's her
18 last opportunity to talk with you.

19 So before I sit down, based upon
20 anything I've said or anything the Judge
21 said, do you have any questions for me?
22 Okay. If not, then I would like to thank
23 you all for your patience and your
24 attention.

25 THE COURT: Thank you, Attorney

1 Barr.

2 Attorney Kuhn.

3 MR. KUHN: Thank you, Judge.

4 Opposing counsel, ladies and
5 gentlemen. Good morning. Again, my name
6 is Matt Kuhn and I'm representing Kayla
7 Ayers today. I do have my co-counsel,
8 Attorney Bible, with me.

9 And I think the Judge and
10 Prosecutor Barr have done a fine job of
11 getting some information from you folks.
12 And, again, this process is designed to
13 make sure that we are getting that fair and
14 impartial group that our society has
15 determined is most appropriate for a
16 criminal trial.

17 And so, you know, sometimes it
18 might sound like I'm beating a dead horse
19 here asking you about the burden of proof,
20 and this and that, but it's an integral
21 element or part of this process that we
22 have to go through. And in order to do my
23 job effectively, I have to make sure that
24 I'm ensuring my client is getting a fair
25 trial here.

1 Let's just vote right now. Juror
2 number 2, we're going to vote, guilty or
3 not guilty right now? What do we think?

4 JUROR #2: Couldn't tell you.

5 MR. KUHN: You couldn't tell me?
6 Okay. Good answer. Number 5, any ideas?

7 JUROR #5: No.

8 MR. KUHN: No answer just yet?

9 Number 6?

10 JUROR #6: No answer.

11 MR. KUHN: No answer yet? Okay,
12 Juror number 9?

13 JUROR #9: No answer.

14 MR. KUHN: Does anybody know what
15 answer I'm looking for here?

16 JUROR #9: Innocent until proven
17 guilty.

18 MR. KUHN: Innocent until proven
19 guilty, right.

20 So now, Juror number 2, do you
21 want to change your vote?

22 JUROR #2: Innocent until proven
23 guilty.

24 MR. KUHN: Okay. Not guilty at
25 this point, right, because you're presumed

1 innocent until you're proven guilty beyond
2 a reasonable doubt.

3 You might think, well, boy, Matt's
4 a jerk, why would he -- why would he trick
5 these nice folks. But I do that to
6 illustrate this point that maybe when we
7 walked in here, we thought, boy, I wonder
8 what that young lady did. I wonder -- you
9 know, I wonder what crime it is that she
10 has committed. Okay. And maybe that's an
11 okay thing to think. Maybe when we read
12 The Repository, or listen to the news, we
13 think, okay, they caught the bank robber,
14 that's great. And maybe, just sort of in
15 our daily lives, maybe that's an okay way
16 to look at things. Okay. But in the
17 criminal court context, or the criminal
18 court setting, it's a little bit different.

19 As jurors, you have to be kind of
20 in a different mindset. And, again, we
21 have this thing where you're presumed to be
22 innocent until you're proven guilty. So if
23 we had to vote right now, obviously it
24 would be not guilty, okay?

25 And this is kind of hoke, but I

1 like to explain to juries and potential
2 jurors that maybe there's this sort of
3 pretend machine or gauge called the
4 guilt-o-meter, okay? And so if we didn't
5 know, you know, if she was innocent or
6 guilty, maybe we would think the
7 guilt-o-meter's at 50 percent right now,
8 straight up, and it's going to tip one way
9 or the other depending on what evidence we
10 hear. Does it sound like it could be a
11 decent way to gauge innocence or guilt?
12 Juror number 6, that sound okay? Like
13 maybe it would be straight up and it would
14 tip one way or the other?

15 JUROR #6: Yes, after you heard
16 the evidence.

17 MR. KUHN: Okay. But since we've
18 talked about how we're presumed innocent,
19 do we think the guilt-o-meter is at 50
20 percent right now?

21 JUROR #6: Yes.

22 MR. KUHN: Okay. Juror number 5,
23 do you have another idea?

24 JUROR #5: It's at not guilty.

25 MR. KUHN: It's at zero right now,

1 right, because we haven't seen any -- any
2 evidence or any testimony to this point.
3 So right now, the guilt-o-meter is still at
4 zero and it's got to go all the way up.
5 Okay. All the way up to proof beyond a
6 reasonable doubt, okay?

7 Mr. Barr brought up speeding
8 tickets, and I think a number of you raised
9 your hand that you had, in your lifetime,
10 gotten a speeding ticket. Unfortunately, I
11 have as well. And nobody felt like they
12 weren't speeding? Did anybody feel that
13 way, that maybe the cop got it wrong?
14 Anybody? Just me? Okay.

15 I had an experience where I feel
16 that the officer did get it wrong. Was I
17 speeding? Yep, sure was. Okay. Was it
18 the miles over that the officer said? I
19 didn't think so. Okay. And so I did
20 object to that, I had a problem with that.
21 But at the end of the day, I paid my
22 ticket, okay? And so maybe I thought that
23 was splitting hairs. Now, you've heard
24 that this is an arson case, an aggravated
25 arson case, not a speeding ticket. This is

1 a little bit different than splitting
2 hairs, okay?

3 And so does anybody think that an
4 officer could get something wrong? Ma'am,
5 I think -- is it Juror 33?

6 JUROR #33: Yes.

7 MR. KUHN: You indicated that your
8 husband was in law enforcement; is that
9 correct?

10 JUROR #33: Yes.

11 MR. KUHN: Okay. I think you
12 indicated that you could, you know, put
13 that aside and still view officers who
14 might testify as you would anybody else?

15 JUROR #33: Yes.

16 MR. KUHN: Do you think an officer
17 could -- could get something wrong?

18 JUROR #33: Anybody could get
19 something wrong.

20 MR. KUHN: Any human being, right,
21 because we're prone to error?

22 JUROR #33: Yes.

23 MR. KUHN: Okay. We know that.
24 If you've ever -- has anybody ever walked
25 down the street and you think you see your

1 buddy and you call their name, or maybe you
2 rush up to them, and it turns out you're
3 wrong?

4 Juror number 21, I think I see you
5 kind of nodding your head, have you ever
6 done that?

7 JUROR #21: Absolutely.

8 MR. KUHN: You know, it's not a
9 big deal, but you thought you saw something
10 and you were wrong, right? Okay.

11 Juror 18, has that ever happened
12 to you?

13 JUROR #18: Yes.

14 MR. KUHN: Okay. As human beings,
15 were sort of prone to those kind of errors,
16 right? Okay.

17 Okay. We did hear that this case
18 here is going to involve an allegation of a
19 fire being set. Okay. Does anybody have
20 any sort of particular emotional feelings
21 when they hear about this notion of a fire
22 being set? Is that emotional to anybody?
23 Okay.

24 Has anybody ever been a victim
25 of -- oh, I'm sorry. Yes, sir? And if

1 you'd prefer to say it at a sidebar, keep
2 that in mind. But you said that does apply
3 to you?

4 JUROR #6: Yes.

5 MR. KUHN: Okay.

6 JUROR #6: It's been a long time,
7 but there was a guy who set a fire to a
8 person's house, and it was my neighbor
9 actually and he was an elderly guy. And me
10 and another guy retained the guy who set
11 the fire until the police came. And I had
12 to go up to the police office, Downtown
13 Canton here, City Hall, and filled out
14 reports. And this guy was out before I --
15 they let me out, he was already walking the
16 street. And he said that -- they said -- I
17 said, I went back up there. They says,
18 well -- I said, why did you let him out and
19 you had me fill out all this paperwork?
20 And they said, well, what you were saying
21 wasn't enough to convict anybody.

22 MR. KUHN: Okay. And so would you
23 say that was a bad experience you had?

24 JUROR #6: Well, yeah, because the
25 guy did do it.

1 MR. KUHN: Okay. Would that
2 experience you had maybe lead you to jump
3 to the conclusion that anybody accused of
4 setting a fire, you know, is guilty of it?

5 JUROR #6: No.

6 MR. KUHN: Okay.

7 JUROR #6: Only thing is, this guy
8 had a problem with setting fires, this
9 wasn't the only fire.

10 MR. KUHN: Okay. So would that
11 experience you had influence how you would
12 listen to the evidence or interpret the
13 evidence here today?

14 JUROR #6: Probably not.

15 MR. KUHN: Okay. Now, Prosecutor
16 Barr indicated that they -- the State of
17 Ohio has the full burden on them to prove
18 this case beyond a reasonable doubt. Does
19 anybody think that's maybe not fair or not
20 appropriate, that maybe some burden should
21 be placed on Kayla and myself? Okay.

22 I might sound nervous up here.
23 When I public speak, sometimes I get a
24 little -- a little antsy beforehand, get a
25 little anxious. Does anybody else have

1 that feeling when they're set to speak in
2 public? Juror number 28, is it?

3 JUROR #28: Yes.

4 MR. KUHN: Okay. So --

5 JUROR #28: It's a normal thing.

6 MR. KUHN: Okay. So it's a normal
7 thing? And so has anybody ever heard that
8 you have the right to remain silent? Have
9 we ever heard that phrase before? You
10 understand that that applies here in the
11 courtroom here today as well?

12 Juror, is it -- let's see -- 69?

13 Juror 69 -- okay, I'm sorry, 66. Were you
14 sort of nodding that you've heard of that,
15 the right to remain silent? And you think
16 it may apply here today; is that right?

17 JUROR #66: Uh-huh.

18 MR. KUHN: If Kayla decided not to
19 speak today or tell her side of things, or
20 tomorrow, would you hold that against her?

21 JUROR #66: No.

22 MR. KUHN: Okay. Would you
23 understand that's her right to remain
24 silent?

25 JUROR #66: Right.

1 MR. KUHN: Okay. And that maybe
2 if she did have to testify she would be
3 nervous and there's a couple wise and
4 crafty Prosecutors here who would be
5 questioning her to maybe get her mixed up
6 and maybe get her to say the wrong thing?

7 JUROR #66: It could happen.

8 MR. KUHN: Okay. Does anybody
9 like to cook? Okay, Juror -- is it 22?

10 JUROR #22: Uh-huh, yes.

11 MR. KUHN: Okay. You like to
12 cook?

13 JUROR #22: Yes.

14 MR. KUHN: Okay. And so you've
15 made some recipes in your lifetime?

16 JUROR #22: Yes.

17 MR. KUHN: Okay. If you were to
18 leave out a main ingredient, would you
19 still have the same product, the same dish?

20 JUROR #22: It just depends. If
21 you're making cookies and you leave out
22 Baking Soda, then it's not going to come
23 out right.

24 MR. KUHN: You're not going to
25 have cookies?

1 JUROR #22: You'll have them, but
2 they just won't taste right.

3 MR. KUHN: You'll have something
4 less than cookies?

5 JUROR #22: Right.

6 MR. KUHN: That notion sort of
7 applies here today as well. The State of
8 Ohio does have that full burden of proof
9 beyond a reasonable doubt and they are
10 going to try to prove these elements of the
11 crimes they've alleged, okay? And if they
12 leave one out, or they can't quite make
13 that burden on one of the elements, you
14 folks will be instructed that you have to
15 acquit Ms. Ayers of that charge, okay?

16 Just like when you make a recipe,
17 the State of Ohio is going to be trying to
18 make a recipe of proving these charges
19 beyond a reasonable doubt and each and
20 every element of them. And I want you all
21 to sort of envision them as being like
22 ingredients in the recipe, okay? So if one
23 of them is lacking, you have to acquit on
24 that. You won't -- you won't have your
25 completed dish that you'd be preparing.

1 Has anybody ever been wrongly
2 accused of something? Nothing ever? Yes,
3 Juror 6, can you tell us about that?

4 JUROR #6: Well, I'm retired, I
5 retired last month, and I got accused of
6 doing something that I did not do. But the
7 people who accused me said that I was the
8 only one that could have done it because
9 they had some charts and they had some
10 graphs which is just, to me, just charts
11 and graphs. But I was written up and
12 disciplined for something that I did not
13 do. And there was just no way for me to
14 make it right.

15 MR. KUHN: Right. So you had --

16 JUROR #6: So I had to live with
17 it. But I did -- but I did not do what I
18 was accused of doing.

19 MR. KUHN: Okay. And you denied
20 doing it, right?

21 JUROR #6: I sure did.

22 MR. KUHN: That's about all you
23 could do, right?

24 JUROR #6: Yeah. But I also asked
25 them for -- to show me, give me some

1 evidence or can you prove what you're
2 saying. And they says, well, you're the
3 only one. It's like something -- you go
4 outside and somebody's car is parked next
5 to yours, it's got a scratch on it, they
6 say, well, your car is next door -- next to
7 mine so you're the only one that could have
8 done it. You say, well, I don't know
9 anything about it.

10 MR. KUHN: Right. And it would be
11 difficult to prove that you didn't do it,
12 right?

13 JUROR #6: Yeah, right.

14 MR. KUHN: That was actually one
15 of the examples I was going to use. I was
16 going to give one of the potential jurors
17 here a hard time and say that they had
18 parked beside me today, opened their car
19 door into my car door today and damaged my
20 vehicle. And so that's interesting that
21 you bring that up.

22 Juror 27, you did that to me this
23 morning, do you remember doing that?

24 JUROR #27: I don't remember.

25 MR. KUHN: No? Okay. Where did

1 | you park?

2 JUROR #27: In the parking garage.

3 MR. KUHN: Right. And that's
4 where I'm parked. You're right beside
5 me so now --

6 JUROR #27: I'm on the top,
7 though.

8 MR. KUHN: Yeah, that's where mine
9 was, too. So I've accused you so now I've
10 proven that he did it, right? Is that
11 right, sir?

12 JUROR #27: No.

13 MR. KUHN: Probably not, right?

14 What if I bring in a couple buddies of mine

15 that say, yeah, you know, we were there,

16 Juror 27 did it, does that prove it?

17 JUROR #27: No.

18 MR. KUHNN: Okay. What if I
19 brought in a photograph that showed my
20 vehicle was, in fact, damaged, does that
21 prove it?

22 JUROR #27: No.

23 MR. KUHN: No, right? So you've
24 denied having done that. Obviously I'm
25 giving you a hard time there, but I want

1 you to keep in mind what sorts of things --
2 and, Juror number 6, you mentioned what
3 sorts of proof or evidence you would want
4 to see in that situation where you've
5 denied the wrongdoing, okay? Unfortunately
6 for Juror number 6, you weren't in a court
7 of law, you weren't in the criminal justice
8 system where we have this standard of proof
9 beyond a reasonable doubt, you were in some
10 other setting.

11 Another example I was going to use
12 was when I was in elementary school,
13 another buddy and I were playing and he
14 said a bad word, okay? And a lunch lady,
15 everybody remember lunch ladies, okay, one
16 of them overheard it and she, I guess, must
17 of scanned over in our direction and knew
18 that it was either my buddy or myself.
19 Okay. And so we both had to go in and
20 have -- instead of being able to go out for
21 recess, we had to sit in the classroom and
22 write a certain number of times, you know,
23 I won't use a bad word. And I had denied
24 doing that, but I was punished as though I
25 had done it, okay? My point of that story

1 is that those might be the rules or the
2 standards of proof required for a
3 playground dispute, okay, if the lunch lady
4 says it is so.

5 Here in the criminal justice
6 system we have a different standard of
7 proof required, proof beyond a reasonable
8 doubt. If all you needed was an allegation
9 or a police officer's testimony that that's
10 what happened, we wouldn't have juries, we
11 wouldn't have courts, it would already be
12 done.

13 Does that make sense to everybody?
14 Juror number -- is it 12?

15 JUROR #12: Yes.

16 MR. KUHN: Does that make sense,
17 that just because a cop says it doesn't
18 make it so?

19 JUROR #12: Yes.

20 MR. KUHN: Do you think -- do you
21 think that's maybe how it should be?

22 JUROR #12: No.

23 MR. KUHN: Okay. Why not?

24 JUROR #12: Well, you really need
25 more info, more information on it, than

1 just saying.

2 MR. KUHN: Okay. So maybe we need
3 something a little bit more?

4 Juror number 24?

5 JUROR #24: Yes.

6 MR. KUHN: You indicated that you
7 think you may have had Jeff Ayers as a
8 student?

9 JUROR #24: I had a Jeff Ayers.

10 MR. KUHN: Okay. I think it may
11 be the same, I'm not sure. I think he may
12 have previously been from -- did you say
13 Sandy Valley area?

14 JUROR #24: Yes.

15 MR. KUHN: Okay. So that may be
16 the same guy. But you indicated that aside
17 from the name, you don't really remember
18 him; is that correct?

19 JUROR #24: Oh, I remember him.

20 MR. KUHN: Okay. Are your
21 recollections positive or negative?

22 JUROR #24: He was a funny kid.

23 MR. KUHN: Okay. I had an
24 experience where I ran into a high school
25 teacher of mine a couple years back, I was

1 playing softball down at Willig Fields, if
2 anyone knows where that is, and a friend of
3 mine on the team knew one of my high school
4 teachers, and I hadn't seen her for some
5 period of time. And when I saw her, I was
6 immediately embarrassed because maybe you
7 would say I was a funny kid. I used to
8 like to work on my stand-up material during
9 class, you know, try to give all my buddies
10 a good laugh so they weren't learning
11 anything.

12 And the way I remembered it was
13 that I was probably a pain to her, probably
14 a problem student, you know. And so when
15 she came up, I sort of introduced myself,
16 she didn't remember me, okay? And so this
17 thing that I thought was memorable, maybe
18 in a bad way, she didn't even remember it
19 at all. So I think different people can
20 remember things differently. Maybe some
21 folks would think something is significant,
22 and other folks wouldn't even think twice
23 about it.

24 So when you say that this Jeff
25 Ayers was a funny guy, is that a good funny

1 or a bad funny?

2 JUROR #24: Good funny.

3 MR. KUHN: Okay. That sounds
4 good.

5 Okay. We had talked about how
6 this standard or this burden of proof
7 beyond a reasonable doubt is the same
8 degree of certainty that you would want to
9 use in your most important personal
10 affairs. Prosecutor Barr talked about
11 maybe deciding when to have children, or
12 perhaps even when or where to purchase a
13 home, maybe where to invest your life
14 savings. Okay. Very crucial decisions
15 that everybody has to make.

16 And I would really like you to
17 focus on that when you are making your
18 decision today or tomorrow, that this is
19 not only important to Ms. Ayers and myself,
20 it's important to the criminal justice
21 system that you do give it that very high
22 degree of certainty, that moral certainty.
23 Does that make sense to everybody? Okay.

24 Can everybody promise me that if
25 you're selected as a juror, you will follow

1 Judge Farmer's instructions with regard to
2 listening to the testimony and how to
3 deliberate? Can anybody not promise me
4 that? Thank you.

5 THE COURT: All right. Thank you,
6 Attorney Kuhn.

7 Now, again, I don't always ask all
8 the right questions, and the attorneys
9 sometimes don't ask the right questions,
10 too, but after having listened to all of
11 our questions, if you could all just take a
12 minute to think if there's any reason
13 whatsoever as to why you think you could
14 not be a fair and impartial juror in this
15 case other than what has already been
16 stated. Anybody think of anything? Okay,
17 very good then.

18 If you are not selected as a juror
19 in this case, you're going to have to turn
20 your badge back in to Magistrate Flowers.
21 The jury commission has indicated that you
22 will need to call back in again tonight
23 after 5.

24 So with that then, the Court and
25 counsel are going to approach at the bench

1 to discuss jury selection. I know we've
2 been sitting here a long time so I know
3 that you're -- and they're not the most
4 comfortable seats, I'll admit, so if you
5 feel the need to stand up and stretch your
6 legs a little bit while we discuss, feel
7 free to do so. Again, we'll be discussing
8 this at a sidebar and don't all try to
9 listen.

10 Okay, you have a question?

11 JUROR #61: May we use the
12 restroom quickly and come back, or is there
13 not time?

14 THE COURT: I think that's fine.
15 If you do need to -- there's restrooms down
16 on this floor. If you go out of the
17 courtroom and then turn to the left, and
18 then there's -- it says victim witnesses,
19 back in that hallway there's restrooms back
20 there. Okay, so if you do need to use the
21 restroom, go ahead. Just remember to come
22 back, okay?

23 Counsel, you want to approach?

24 - - - - -

25 (A conference was held at the

1 bench outside the hearing of the
2 prospective jurors.)

3 - - - - -

4 THE COURT: It's been a long time
5 for them to be sitting. Let's go through
6 the challenges for cause.

7 MR. BARR: Okay. I have Juror
8 number 21 who indicates he couldn't be fair
9 and impartial because it involved small
10 children. Juror number 72 for the same
11 reason. And Juror number 26 for the same
12 reason.

13 THE COURT: Okay. Any objection
14 to 26?

15 MR. KUHN: No.

16 THE COURT: So 21 --

17 THE BAILIFF: 22 will go into 21's
18 spot.

19 THE COURT: 72, that's back there.
20 And 26.

21 THE BAILIFF: 28 will go into 26's
22 spot. We'll fill those at the end then.

23 THE COURT: Yeah, okay. Did you,
24 Attorney Kuhn, have any challenges for
25 cause other than those that are already

1 stated?

2 MR. KUHN: Judge, I would say
3 Juror 50.

4 MR. BARR: Okay. I don't think,
5 but if he's willing to excuse him, I'm
6 willing to join in that.

7 THE COURT: At first he did, but
8 sort of brought it back. But if it's
9 consented to, that's fine. I think there
10 was enough.

11 MR. BARR: I have no more for
12 cause.

13 THE COURT: Okay.

14 MR. KUHN: You didn't say 27, did
15 you?

16 MR. BARR: No, I did not.

17 MR. KUHN: I think he kind of did
18 the same thing where he initially said he
19 didn't think he would be able to, and then
20 I think backpedaled on that.

21 THE COURT: That was 72 you think?

22 MR. KUHN: I thought that was 27
23 who had the deadlines.

24 THE BAILIFF: He has work.

25 THE COURT: He has work, but he

1 said that -- he was rehabilitated to say he
2 could put that aside.

3 I will tell you, just because
4 Christmas just happened, that the lady in
5 the back works at Toys "R" Us and she
6 didn't seem to know who I was, I think I
7 may know her well because I'm there the
8 whole time. If you want me to ask her, I
9 can. I don't know her name other than I
10 saw her several times at Christmas, okay?

11 Anybody else for cause?

12 MR. BARR: None from the State,
13 Your Honor.

14 THE BAILIFF: Wondered why she
15 looked so familiar to me.

16 MR. KUHN: None from us.

17 THE COURT: Then we'll go back and
18 do peremptories from the bench. Give them
19 a couple minutes to trickle back in.

20 (End of conference at the bench.)

21 - - - - -

22 THE COURT: Counsel, approach for
23 a minute.

24 - - - - -

25 (A conference was held at the

1 bench outside the hearing of the
2 prospective jurors.)

3 - - - - -

4 THE COURT: I think we'll just
5 take a lunch break, so if you think 11:30
6 to 12:30 --

7 MR. BARR: The only thing is, I
8 had some witnesses coming at 12:30 I'll
9 need to talk to because I thought we would
10 be at lunch. I don't know if we could do
11 openings, and then take a lunch. Is that
12 all right?

13 MR. KUHN: That would be fine
14 except my client needs to use the restroom.

15 THE COURT: What we were going to
16 do is pick a jury, I'll give them a brief
17 break, I have to give the court reporter a
18 break, take a 10 or 15 minute recess, then
19 start up.

20 MR. BARR: Okay.

21 THE COURT: Hopefully by about
22 12:30 we will be ready to take a lunch
23 break.

24 MR. KUHN: Sounds good.

25 MR. BARR: Thank you, Judge.

1 (End of conference at the bench.)

2 - - - - -

3 THE COURT: If everybody could
4 take a look around and make sure your
5 neighbor's still with us and they came
6 back. Anybody notice a missing neighbor?
7 Okay, very good then.

8 At this time the Court is going to
9 excuse the following jurors for cause: And
10 that would be Jurors number 21, Jurors
11 number 72, Jurors number 26, and Juror
12 number 50. At this time those jurors can
13 hand their badges to Magistrate Flowers.
14 And, again, you will need to call back in
15 tonight after 5. Yep, you're free to go.

16 JUROR #72: Thank you.

17 THE COURT: And Juror number 50,
18 you're free to go, too, okay? Thank you
19 for your services this morning. I know it
20 was a tough road to get in here, but we do
21 appreciate it. And just remember to call
22 back in.

23 Very good. Now we are going to
24 begin the musical chairs portion of our
25 program. And at this point we're going to

1 fill our box back up.

2 THE BAILIFF: Juror number 27, if
3 you could please take the seat that was
4 previously occupied by Juror number 21.

5 And Juror number 28, if you could
6 just take the seat right next to you there
7 that was occupied by Juror number 26.

8 THE COURT: Okay. At this time
9 the State may exercise a peremptory
10 challenge.

11 MR. BARR: Thank you, Your Honor.
12 At this time the State would thank and
13 excuse Juror number 12. Thank you, ma'am.

14 THE COURT: Okay. Juror number
15 12, you can hand your badge, again, to
16 Magistrate Flowers. And remember to call
17 in tonight after 5. And thank you for
18 coming in today.

19 THE BAILIFF: Juror number 30, if
20 you could please take the seat that was
21 previously occupied by Juror number 12.

22 THE COURT: Okay. Mr. Kuhn?

23 MR. KUHN: Thank you, Judge. At
24 this time we would like to thank and excuse
25 Juror number 27 please.

1 THE COURT: Okay. Juror number
2 27. Again, hand your badge --

3 THE BAILIFF: Juror number 32.

4 THE COURT: -- and call back in
5 tonight after 5:00, okay?

6 THE BAILIFF: Right up here in the
7 top row.

8 THE COURT: Mr. Barr?

9 MR. BARR: Thank you, Your Honor.
10 At this time the State of Ohio would thank
11 and excuse Juror number 18. Thank you,
12 ma'am.

13 THE COURT: Okay. Juror number
14 18, you are excused. Just hand your badge
15 back to Magistrate Flowers. Remember to
16 call back in tonight after 5.

17 THE BAILIFF: Juror number 33.
18 You can come this way. Just watch your
19 step on the cord.

20 THE COURT: Attorney Kuhn?

21 MR. KUHN: Juror -- Judge, thank
22 you. At this time we would like to thank
23 and excuse Juror number 5 please.

24 THE COURT: Okay, Juror number 5,
25 you are excused. Thank you for your

1 service this morning. Hand your badge back
2 in and remember to call tonight after 5.

3 THE BAILIFF: Juror number 34.

4 THE COURT: And watch the cord
5 there on your way out. And just watch the
6 cords on your way up.

7 Attorney Barr?

8 MR. BARR: At this time, Your
9 Honor, the State of Ohio would thank and
10 excuse Juror number 32. Thank you, ma'am.

11 THE COURT: Well, that seems to be
12 the unlucky seat there, or lucky depending
13 on your perspective.

14 THE BAILIFF: Juror number 35.

15 THE COURT: Just remember to call
16 back in tonight after 5.

17 Okay, Attorney Kuhn?

18 MR. KUHN: We would pass, Judge,
19 thank you.

20 THE COURT: All right, thank you.

21 Attorney Barr?

22 MR. BARR: Thank you, Your Honor.
23 At this time the State would thank and
24 excuse Juror number 6. Thank you very
25 much, sir.

1 THE COURT: All right. Juror
2 number 6, you are excused. Thank you for
3 your service this morning, and remember to
4 call back in tonight after 5.

5 THE BAILIFF: Juror number 38.

6 THE COURT: Attorney Kuhn?

7 MR. KUHN: Thank you, Your Honor.
8 We would like to excuse Juror 38 please.

9 THE COURT: You don't even get a
10 chance there. Thank you number -- Juror
11 number 38 for your service this morning.
12 Just remember to call back in tonight after
13 5.

14 THE BAILIFF: Juror number 39.
15 Come around this way. Watch your step
16 please.

17 THE COURT: Okay. At this time we
18 are going to select an alternate -- two
19 alternate jurors. The role of the
20 alternate jurors is very important; in the
21 event that one of our regular jurors is
22 unable to complete his or her service in
23 this case, the alternate juror will then
24 step in to serve as a regular juror. It's
25 very important that the alternate juror

1 listens attentively to these proceedings
2 and assume, unless you're told otherwise,
3 that you're going to deliberate upon a
4 verdict in this case.

5 And at this point Jurors number --
6 is it 44?

7 THE BAILIFF: Uh-huh.

8 THE COURT: 44 and 49 are our
9 alternate jurors. At this time does the
10 State wish to exercise a peremptory
11 challenge with respect to either of the
12 alternate jurors?

13 MR. BARR: No, Your Honor, thank
14 you.

15 THE COURT: All right. And
16 Defendant?

17 MR. KUHN: No, thank you, Judge.

18 THE COURT: All right, thank you.
19 Then Jurors number 44 and 49, you can come
20 on down, you are our alternate jurors.

21 THE BAILIFF: Juror number 44,
22 you'll take the front seat. And Juror
23 number 49, you'll be in the back seat.

24 THE COURT: All right. Very good.
25 It appears as though we have a jury

1 selected in this case. At this time I'd
2 ask Magistrate Flowers to swear in the
3 jury.

4 THE BAILIFF: If you could please
5 stand and raise your right hand.

6 - - - - -
7 (Thereupon, the jury panel was
8 sworn in by the Bailiff.)

9 - - - - -
10 THE BAILIFF: Thank you.

11 THE COURT: All right. You may be
12 seated. And was anyone unable to take the
13 oath as administered by the Court? The
14 Court notes no one.

15 All right. We have selected and
16 seated a jury in this case. The Court
17 would like to thank all of you for your
18 service here this morning and for all the
19 attention that you have given us. I know
20 that it's been a long morning, but it's
21 only through individuals like yourself that
22 we ensure that our system of justice
23 continues to work.

24 If you are not selected as a juror
25 today, please, you're free to go, you're

1 free to stay if you'd like, but you can
2 hand your badge to Magistrate Flowers.

3 Again, the jury commission has
4 indicated that you will need to call
5 tonight after 5. So, again, thank you for
6 your cooperation. If you are not chosen,
7 you may leave.

8 (Thereupon, the prospective jurors
9 not chosen exited the courtroom
10 at 11:38 a.m.)

11 THE COURT: All right. Very good.
12 We have had a long morning already. At
13 this time we're going to take about a 15
14 minute recess, give you time if you need to
15 change anything or make any plans, you can
16 contact your family and let them know that
17 you were selected and that you will be here
18 for two days. If you have childcare
19 arrangements or any arrangements that need
20 to be made.

21 But during the recess, you're not
22 to let anyone to discuss the trial with you
23 or in your presence. Do not discuss the
24 case among yourselves. And do not form or
25 express any opinion on the case until it is

1 finally submitted to you.

2 We'll meet you back in the jury
3 assembly room, which is the room where you
4 started off this morning, in about 15
5 minutes.

6 Feel free, again, to get something
7 to drink. You're obviously -- you're more
8 than welcome to bring any drinks that you'd
9 like to back into the courtroom with you,
10 we just ask no food, okay?

11 There is a snack stand downstairs
12 for your convenience. And, like I said, if
13 you do need to make a call to let your
14 family know where you are, you are free to
15 do that, but keep in mind my admonition
16 that you can't talk about the case. So you
17 can tell them, I was selected as a juror, I
18 can't talk about the case so don't even ask
19 me about the case. But whatever
20 arrangements need to be made can be made.

21 Again, we'll meet you back in the
22 jury room in about 15 minutes. When you
23 come back, we're going to go through some
24 preliminary instructions and we're going to
25 do opening statements, and then we'll break

1 for lunch, okay?

2 So with that then, you are excused
3 and we'll see you in about 15 minutes.

4 And I just want to note that the
5 clock, in case anybody is keeping track,
6 the clock over there is approximately six
7 minutes fast. So right now I have the time
8 as 11:32. So you have 15 minutes from
9 11:32, okay?

10 THE BAILIFF: All rise.

11 - - - - -

12 (Court recessed at 11:32 a.m. and
13 reconvened at 11:52 a.m., and the
14 following proceedings were had.)

15 THE COURT: You may be seated.

16 Welcome back, ladies and gentlemen. On
17 your chairs you will find a binder, and
18 inside the binder you'll find notepaper as
19 well as some preliminary instructions.

20 With respect to the preliminary
21 instructions, I do have instructions that,
22 in accordance with law, I must give you.
23 And I figure instead of listening to me
24 reading to you, you are free to read along.
25 Obviously you don't have to, you can listen

1 to my instructions, but because they are
2 specific in nature, I will be reading them
3 to you. So at this point if you want to
4 turn to the preliminary instructions then
5 we'll get started.

6 It's important that you be fair
7 and attentive throughout the trial. Do not
8 discuss this case among yourselves or with
9 anyone else. Do not permit anyone to
10 discuss it with you or in your presence.
11 Do not form or express any opinion on the
12 case until it's finally submitted to you.
13 More difficult for you to understand is
14 that you may not discuss this case among
15 yourselves until it's finally submitted to
16 you.

17 You will receive the opening
18 statements, the evidence, the arguments of
19 counsel, and the law from the Court in that
20 order. It would be unfair to discuss the
21 case among yourselves before you receive
22 everything necessary to reach an informed
23 decision. You must explain this rule,
24 prohibiting discussion of the case, to your
25 family and friends. When the trial is

1 over, you will be released from this
2 instruction. At that time you may, but are
3 not required to, discuss the case and your
4 experiences as a juror. Until that moment,
5 you must control your natural desire to
6 discuss the case both here and at home.

7 The Court instructs you not to
8 converse with the attorneys, parties, or
9 witnesses during the trial. Likewise, the
10 participants in the trial must not converse
11 with you. If anyone should attempt to
12 discuss the case with you, report the
13 incident to the Court or to the bailiff
14 immediately.

15 You may not investigate or attempt
16 to obtain additional information about this
17 case outside the courtroom. It's highly
18 improper for any one of you to attempt to
19 do so.

20 You are instructed not to read,
21 view, or listen to any report in the
22 newspaper, radio, television, or Internet,
23 including social media, such as Facebook
24 and Twitter, on the subject of this trial.
25 Do not permit anyone to read or comment

1 upon the evidence received in the
2 courtroom. If you should acquire
3 information from an outside source, you
4 must not report it to the other jurors and
5 you must disregard it in your
6 deliberations. In addition, you should
7 report the outside source of information to
8 the bailiff or to the Court at the first
9 opportunity.

10 Ladies and gentlemen of the jury,
11 the Court and counsel will work on your
12 case for trial as efficiently as possible.
13 Sometimes delays occur, however, through no
14 one's fault. Motions come up during the
15 trial that must be heard outside the
16 hearing of the jury. Witnesses may be
17 late. At other times other cases,
18 unrelated to the case on trial, come before
19 the Court for emergency action and need
20 immediate attention.

21 There may be times when you are
22 sitting in the jury room not hearing
23 evidence, but that does mean we have
24 forgotten you or that the Court is not
25 busy. I apologize for any such delays in

1 advance, and the Court will keep you
2 informed about these matters.

3 The procedure for the trial is
4 controlled by statute. First, counsel for
5 the State of Ohio outlines what he or she
6 expects the evidence will be. Counsel for
7 the Defendant then may state what his or
8 her evidence will be. These opening
9 statements are not evidence; they are
10 previews of the claims of each party
11 designed to help you follow the evidence
12 and understand the case as it is presented.

13 In the presentation of the
14 evidence, the State of Ohio proceeds first.
15 Thereafter, the Defendant may offer
16 evidence, and the State of Ohio may offer
17 rebuttal evidence. The trial itself
18 concludes with the arguments of counsel and
19 the instruction of law by the Court. Then
20 you will deliberate upon your verdict.

21 Before we hear the opening
22 statements of counsel and begin to take
23 evidence, I believe it would be helpful if
24 you were to have some additional
25 preliminary instructions to follow in

1 listening to and considering the evidence
2 which you will hear in this case.

3 Later, after you have heard all of
4 the evidence and closing arguments of
5 counsel, I will give you further
6 instructions covering additional law which
7 you are to follow in this case. It is the
8 duty of the Judge to instruct you in the
9 law, and it's your duty to follow the law
10 as I will state it to you both now and at
11 the conclusion of all the evidence.

12 First of all, it's your exclusive
13 duty to decide all questions of fact
14 submitted to you. In connection with this
15 duty, you must determine the effect and
16 value of the evidence. You must not be
17 influenced by -- in your decision by
18 sympathy, prejudice, or passion toward any
19 party, witness, or attorney in the case.

20 If, in these instructions or in
21 the instructions which I will give to you
22 at the conclusion of the evidence, any
23 principle or idea is repeated or stated in
24 varying ways, no emphasis thereon is
25 intended and none must be inferred by you.

1 Therefore, you must not single out any
2 particular sentence or individual point or
3 instruction and ignore the others, but,
4 rather, you are to consider all of the
5 instructions as a whole and are to consider
6 each instruction in relation to all the
7 other instructions.

8 The fact that I give you some of
9 the instructions now and some at the
10 conclusion of the evidence has no
11 significance as to their relative
12 importance, nor has the order in which I
13 give you the instructions.

14 The attorneys, of course, will
15 have active roles in the trial. They will
16 make opening statements to you, question
17 witnesses, and make objections. And,
18 finally, will argue the case as the last
19 step before you hear my final instructions
20 and commence your deliberations. Remember
21 that attorneys are not witnesses, and since
22 it is your duty to decide the case solely
23 on the evidence which you see or hear in
24 the case, you must not consider as evidence
25 any statement of an attorney made during

1 the trial. There is an exception, and that
2 is if the attorneys agree to any fact.
3 Such agreement, stipulation, or admission
4 of fact will be brought to your attention,
5 and you may then regard such fact as being
6 conclusively proved without the necessity
7 of further evidence of such fact.

8 If a question is asked and an
9 objection to the question is sustained, you
10 will not hear the answer and you must not
11 speculate as to what the answer might have
12 been or as to the reason for the objection.

13 If an answer is given to a
14 question and the Court then grants a motion
15 to strike out the answer, you are to
16 completely disregard such question and
17 answer and not consider them for any
18 purpose. A question in and of itself is
19 not evidence and may be considered by you
20 only as it supplies meaning to the answer.

21 Any fact in this case must be
22 proven by either direct or circumstantial
23 evidence. Direct evidence means exactly
24 what the name implies. That is, it is
25 evidence which directly proves a fact

1 without having to infer that fact from some
2 other fact. Direct evidence is usually the
3 testimony given by a witness who has seen
4 or heard the facts to which he or she
5 testifies. It includes exhibits admitted
6 into evidence during the trial.

7 Circumstantial evidence, on the
8 other hand, is the proof of facts by direct
9 evidence from which you may infer a fact in
10 question.

11 For example, if the question of
12 fact in a given case is whether or not
13 Johnny ate the cherry pie, testimony by a
14 witness that he or she saw Johnny put the
15 pie in his mouth and eat it would be direct
16 evidence of such fact. However, if a
17 witness testifies that he or she arrived in
18 the kitchen only to see Johnny standing
19 there with an empty pie tin in his hand and
20 cherry pie on his face, that would be
21 circumstantial evidence of the fact that
22 Johnny ate the pie.

23 The law requires no distinction
24 between direct and circumstantial evidence
25 as to the degree of proof required, and

1 either type of evidence, or a combination
2 of them, may prove facts. Each is accepted
3 as a reasonable method of proof, and each
4 is respected for convincing force as it may
5 carry.

6 As jurors, you have the sole and
7 exclusive duty to decide the credibility of
8 the witnesses who testify in this case,
9 which simply means that it is you who must
10 decide whether to believe or disbelieve a
11 particular witness and how much weight, if
12 any, to give to the testimony of each
13 witness.

14 In determining these questions,
15 you will apply the tests of truthfulness
16 which you apply in your daily lives. These
17 tests include the appearance of each
18 witness on the stand; his or her manner of
19 testifying; the reasonableness of the
20 testimony; the opportunity he or she had to
21 see, hear, and know the things concerning
22 which he or she testified; his or her
23 accuracy of memory; frankness, or lack of
24 it; intelligence, interest and bias, if
25 any; together with all the facts and

1 circumstances surrounding the testimony.
2 Applying these tests, you will assign to
3 the testimony of each witness such weight
4 as you deem proper.

5 You are not required to believe
6 the testimony of any witness simply because
7 it was given under oath. You may believe
8 all or any part of the testimony of any
9 witness.

10 You should not decide any issue of
11 fact merely on the basis of the number of
12 witnesses who testify on each side of such
13 issue. Rather, the final test in judging
14 evidence should be the force and weight of
15 the evidence, regardless of the number of
16 witnesses on each side of an issue. The
17 testimony of one witness believed by you is
18 sufficient to prove any fact.

19 Also, discrepancy in a witness's
20 testimony or between his or her testimony
21 and that of others, if there are any, does
22 not necessarily mean that you should
23 disbelieve the witness, as people commonly
24 forget facts or recollect them erroneously
25 after the passage of time. You are

1 certainly all aware of the fact that two
2 persons who are witnesses to an incident
3 may often see or hear it differently. In
4 considering a discrepancy in a witness's
5 testimony, you should consider whether such
6 discrepancy concerns an important fact or a
7 trivial one.

8 If you conclude that a witness has
9 willfully lied in his or her testimony as
10 to a material fact, you may distrust all of
11 that witness's testimony, and you would
12 then have the right to eject all of that
13 witness's testimony, unless, from all of
14 the evidence, you believe that the
15 probability of truth favors his or her
16 testimony and other particulars.

17 During this trial the jurors will
18 be permitted to take notes. The Court has
19 provided you with a pen and a folder
20 containing paper for your convenience. For
21 years, the practice of juror note taking
22 has been discouraged. It was believed that
23 taking notes may distract your mind from
24 the evidence that's being presented.
25 Another reason was that the best note taker

1 might have more influence on other jurors
2 than is appropriate. I suggest you take
3 notes when there is a pause in testimony.
4 Remember, each of you must individually
5 determine the issues in this case.

6 At the end of the case, in
7 deliberations, your collective minds will
8 then reach a verdict. Please understand
9 that testimony cannot be repeated, nor the
10 trial delayed, to permit accurate note
11 taking. It is your responsibility to
12 listen to the testimony.

13 There is no requirement to take
14 notes. Again, the Court instructs you that
15 you will have to rely on your collective
16 memories as to the testimony that you have
17 heard. You will not be provided with a
18 transcript of the testimony and it will not
19 be repeated.

20 Please write your juror number on
21 the front page of your folder at this time.
22 The bailiff will collect the folders. Your
23 notes will be redistributed to you when we
24 reconvene. You may not remove the folder
25 from the courtroom. However, during jury

1 deliberations, you may have your notes with
2 you in the jury room.

3 All notes are confidential and for
4 consideration of the jury only. After you
5 have concluded your deliberations, your
6 notes will be collected and destroyed.

7 The burden of proving the elements
8 of the offense charged is upon the
9 prosecution. The Defendant is presumed
10 innocent until his -- until her guilt is
11 established beyond a reasonable doubt. The
12 Defendant must be found not guilty unless
13 the State of Ohio produces evidence which
14 convinces you beyond a reasonable doubt of
15 every essential element of the offense
16 charged in the complaint.

17 Reasonable doubt is present when,
18 after you have carefully considered and
19 compared all the evidence, you cannot say
20 you are firmly convinced of the truth of
21 the charge. Reasonable doubt is a doubt
22 based on reason and common sense.
23 Reasonable doubt is not mere possible
24 doubt, because everything relating to human
25 affairs or depending on moral evidence is

1 open to some possible or imaginary doubt.

2 Proof beyond a reasonable doubt is
3 proof of such character that an ordinary
4 person would be willing to rely and act
5 upon it in the most important of his or her
6 own affairs.

7 If, after a full and impartial
8 consideration of all of the evidence, you
9 are firmly convinced of the truth of the
10 charge, the State of Ohio has proved its
11 case beyond a reasonable doubt. If you are
12 not firmly convinced of the truth of the
13 charge, you must find the Defendant not
14 guilty.

15 Testimony of the Defendant: It is
16 not necessary that the Defendant take the
17 witness stand in her own defense. The
18 Defendant has a constitutional right not to
19 testify. If, in fact, the Defendant does
20 not testify, you must not consider that for
21 any purpose. However, if the Defendant
22 does testify, the testimony of the
23 Defendant is to be weighed by the same
24 rules that apply to other witnesses.

25 This concludes -- concludes my

1 preliminary instructions to you, and I hope
2 that they will be of some assistance to you
3 in listening to and considering the
4 evidence. Please keep these instructions
5 in mind as you listen to the evidence and
6 statements of counsel. I may give you
7 additional instructions during the trial.

8 And when the evidence and closing
9 arguments are concluded, I will give you
10 additional instructions on the law which
11 you are to follow, together with the
12 instructions you have just heard and any
13 given during the conduct of the trial.

14 At this time the parties will be
15 afforded the opportunity to give you an
16 opening statement. Counsel for the State
17 of Ohio and the Defendant may have an
18 opening statement. Again, opening
19 statements of counsel are concise and
20 orderly descriptions of each side's claims
21 and defenses and the evidence counsel
22 expects to produce in support of those
23 claims and defenses. They are not
24 evidence. Each side will address you once
25 during opening statement with the State of

1 Ohio going first.

2 Attorney Schnellinger.

3 MS. SCHNELLINGER: Your Honor,
4 counsel. Ladies and gentlemen of the jury,
5 thank you so much for your time and
6 attention thus far.

7 I'm going to give you a brief
8 overview of the facts of the case so you
9 have an idea of what happened on October
10 3rd, 2012 when this woman, this woman here,
11 when she lit her house on fire with her
12 3-year-old son and herself inside.

13 Throughout the trial witnesses and
14 evidence may be presented out of order.
15 This will give you an overview or some
16 guidance about the evidence that will be
17 presented.

18 Defendant lived at 185 26th Street
19 Southeast in Massillon, Stark County, Ohio.
20 Her father had rented this house and he
21 lived there with his girlfriend and her two
22 children. The Defendant and her boyfriend
23 and their three children also lived there.

24 Now, at the actual time of the
25 fire, everyone else was gone and had been

1 gone for some time, everyone except the
2 Defendant and her 3-year-old son. Her
3 father and his family had left that day,
4 they left that day and went to West
5 Virginia because they were going to move
6 there. They were going down there to make
7 arrangements for that move.

8 The Defendant's boyfriend, a man
9 by the name of Brennan Scott, he had come
10 home at about 5:00, he had come home with
11 his boss, they came back to the house to
12 pick up the boss's children, and then the
13 four of them left. So the boyfriend, the
14 boss, and his kids all left, it was about
15 5:00.

16 Defendant's oldest two children
17 had left around 6:15, two little girls,
18 they left on a church bus. It was a
19 Wednesday. So only the Defendant and her
20 3-year-old son remained at the house.

21 Now, about 6:30, a member of a
22 local church, Karen Ball, had arrived at
23 the Defendant's residence to pick up the
24 Defendant and also the 3-year-old son to
25 take them to church. This was a regular

1 arrangement every Wednesday. Now, they
2 went separate from the other two girls.

3 Now Karen went to the door and she
4 knocked. No one answered. Karen could
5 hear a dog barking. She could see in the
6 house, she could see the Defendant's purse
7 and other things that the Defendant goes
8 nowhere without. She could see that stuff
9 inside the house. She also heard someone
10 in the house say "shh." Karen saw no
11 vehicles in the driveway. Karen waited a
12 short time. Eventually she left, went to
13 church.

14 Karen goes to church and
15 participates in services. But when she
16 left, she didn't feel right. The pit of
17 her stomach didn't feel right. She didn't
18 feel right about the Defendant. So she
19 left church early and decided to go back to
20 the Defendant's house, about 8 p.m. She
21 drove -- she drives down the Defendant's
22 street, she can see the house and she sees
23 a glow from the basement windows, a
24 flickering light. She can see that the
25 basement is on fire.

1 She goes to the door, she pounds
2 on the door. Nobody answers. She runs
3 around the house. Now, I will tell you
4 Karen at this time was physically disabled,
5 she wasn't walking that fast. So when I
6 say run, she was walking really slow, she
7 was using a cane at that time, but she got
8 around to the other side of the house,
9 pounds on that door, all she hears is a dog
10 barking the time that she's there, about
11 ten minutes. So she starts to go back to
12 her car, she's going to get her cane, she's
13 going to try to get help.

14 The Defendant finally exits the
15 house. Karen can see the 3-year-old son.
16 He had come out of the house, but she
17 doesn't see the other two children. She
18 didn't know where they were. She asked the
19 Defendant, Where are the girls? Defendant
20 never tells her.

21 Jennifer Conley comes over, she's
22 a neighbor. She comes over to help. One
23 of those neighbors calls 911. Both Karen
24 and Jennifer, they describe the Defendant
25 as smelling like marijuana and acting, in

1 their opinion, weird or bizarre.

2 Thankfully, Massillon Fire
3 Department arrives, they put the fire out.
4 The fire started in the basement in a
5 mattress and it spread up to the ceiling
6 and into the first floor, just the floor
7 part.

8 The fire was started in two
9 separate and distinct places on that
10 mattress, two separate starts.

11 When the Defendant is asked what
12 happened, she gives multiple stories.
13 From, Bubba started the fire, that's what
14 she calls her 3-year-old son, to Brennan
15 started the fire, to her dad started the
16 fire. I'll remind you, Brennan wasn't
17 there, wasn't at the house, and neither was
18 her father. They started the fire.

19 However, right before this fire
20 when Defendant told -- when the Defendant's
21 father told her that he was going to move,
22 he was going to move without her, Defendant
23 told her father, If you leave me again, I
24 will burn this house down. If you leave me
25 again, I'll burn this house down.

1 Defendant leaves -- or Defendant's father
2 leaves to go to West Virginia to move, she
3 burns the house down, she lights it on
4 fire.

5 The crimes or the charges you will
6 be asked to consider is aggravated arson
7 and endangering children. Now, I know
8 they've been gone over, but they're very
9 important, these elements. On October 3rd,
10 2012, 185 26th Street Southeast, Massillon,
11 Stark County, Ohio, the Defendant, by means
12 of fire or explosion, obviously I've
13 already told you it's fire, knowingly
14 caused physical harm to that residence.

15 Endangering children, same date,
16 same place. The Defendant recklessly,
17 being the parent, guardian, custodian of
18 children under 18, created a substantial
19 risk to their health and safety.

20 After you've heard all the
21 testimony, seen the evidence, follow the
22 law, which will be given to you by Her
23 Honor, and follow your oath, we will ask
24 you to come back with a finding of guilty
25 of one count of aggravated arson and one

1 count of endangering children. Thank you.

2 THE COURT: Thank you.

3 Attorney Kuhn.

4 MR. KUHN: Thank you, Your Honor,
5 opposing counsel. Ladies and gentlemen of
6 the jury, good afternoon now. I'll try to
7 be brief here.

8 The State of Ohio is going to call
9 a number of witnesses today and they're
10 going to introduce some evidence. I'll
11 predict they'll probably have a video for
12 you to view, maybe some photographs. And
13 the Prosecutor's made a number of promises
14 to you here this early afternoon with
15 regard to what we will hear and what we
16 will take away from these witnesses, from
17 their testimony.

18 And it's my position that when
19 they're putting together their recipe for
20 the two crimes alleged, that being
21 aggravated arson and endangering children,
22 they're going to come up at least one
23 ingredient short of the recipe. They are
24 not going to be able to prove that Kayla
25 knowingly set that home on fire. Was there

1 a fire? Yes. Did she deliberately set it?
2 No.

3 This was an accident. We're going
4 to hear some testimony today and I predict
5 it will involve the possibility that it was
6 due to my client's son getting access to a
7 cigarette lighter. We'll also hear some
8 evidence to indicate that perhaps she had
9 fallen asleep with a cigarette and that the
10 fire stemmed from that behavior. It's very
11 unfortunate, but it is not a crime, it is
12 an accident.

13 The State of Ohio is going to
14 indicate that my client's story changed
15 from when she was initially interviewed
16 through today, that her story somehow
17 changed or she deviated. It didn't. She
18 denied setting the fire from the very
19 beginning. She never once indicated she
20 set that house on fire.

21 I want you to pay very close
22 attention to the witnesses and the
23 testimony that you hear today. I'm sure
24 you will because you've promised me that
25 you will give it the same amount of

1 consideration and require that same degree
2 of certainty that you would require in your
3 most important personal affairs, things
4 like when to have children.

5 The State of Ohio cannot prove
6 this case today. We've heard the phrase
7 that if the glove don't fit, you must
8 acquit. I won't do that. There's no glove
9 in this case. I will say, if the elements
10 don't fit, you must acquit. If the
11 ingredients aren't there, you must acquit.

12 In this case, they cannot show
13 that Ms. Ayers knowingly set that structure
14 on fire. There are going to be
15 discrepancies in the reports from the fire
16 department. We're going to hear about
17 that.

18 We're going to hear that I believe
19 there was a shotty investigation conducted.
20 We're going to hear from some friends and
21 neighbors, maybe even some relatives of Ms.
22 Ayers. Nobody was there at the time,
23 nobody saw how that fire started.

24 And the State of Ohio, even though
25 they said my client lit her house on fire,

1 they don't know how that fire started and
2 they cannot prove that to you. Thank you.

3 THE COURT: All right. Ladies and
4 gentlemen, at this time you've heard the
5 opening statements of counsel as well as my
6 preliminary instructions. At this point we
7 are going to take a lunch recess for one
8 hour. We're going to reconvene at 1:30.

9 Again, during the lunch recess, do
10 not permit anyone to discuss the trial with
11 you or in your presence. Do not discuss
12 the case among yourselves. And do not form
13 or express any opinion on the case until
14 it's finally submitted to you.

15 You are free to leave the building
16 for lunch, just make sure you do come back.
17 And we'll reconvene again at 1:30 in the
18 jury assembly room which is where you
19 reported this morning as well as for the
20 morning break. And we'll start up with
21 testimony and evidence presented by the
22 State of Ohio. Okay.

23 THE BAILIFF: All rise. You can
24 leave your notebooks on your chairs.

25

- - - - -

1 (Thereupon, a luncheon recess was
2 taken at 12:20 p.m. with the
3 proceedings resuming at
4 1:30 p.m.)

5 - - - - -

6 AFTERNOON SESSION

7 THE COURT: It's come to the
8 Court's attention that one of the seated
9 jurors in this matter has requested that
10 the video screen on the Defense table be
11 moved so that they can see the Defendant.

12 Attorney Kuhn, do you have any
13 objection with that video screen being
14 moved? Do you have any objection?

15 MR. KUHN: No. No, that's fine,
16 Judge.

17 THE COURT: Okay. Let the record
18 reflect -- Attorney Barr, any objection?

19 MR. BARR: No, Your Honor.

20 THE COURT: All right. That the
21 screen has been moved out of the direct
22 view of the Defendant and moved off to the
23 side, and hopefully that clarifies whatever
24 issue existed.

25 THE BAILIFF: All rise.

1 (Thereupon, the jury reentered
2 the courtroom at 1:40 p.m.)

3 THE COURT: Welcome back again,
4 ladies and gentlemen. At this time the
5 opening statements of counsel have been
6 presented, the State of Ohio may call its
7 first witness.

8 MS. SCHNELLINGER: Thank you, Your
9 Honor. The State would call Captain Annen
10 to the stand.

11 THE COURT: Okay.

12 RICHARD ANNEN
13 who, after being first duly sworn,
14 testified as follows:

15 THE COURT: Okay. Attorney
16 Schnellinger, you may inquire.

17 DIRECT EXAMINATION

18 BY MS. SCHNELLINGER:

19 Q Thank you.

20 Can you please state your name for
21 the record?

22 A Richard Annen, A-N-N-E-N.

23 Q And how are you employed?

24 A City of Massillon as a Captain paramedic.
25 Fire department.

1 Q Are you specifically assigned to the fire
2 department, would that be correct?

3 A Correct.

4 Q How long have you worked in that capacity?

5 A Thirty-one years.

6 Q Have you held any other jobs with the
7 Massillon Fire Department?

8 A I was a paramedic before I was promoted to
9 Captain.

10 Q So can you describe your current duties and
11 responsibilities as a Captain?

12 A I am in charge of Station 4, our fire --
13 our squad and our engine company.

14 Q Approximately how many firefighters work
15 for you?

16 A At my station there's two, and on our shift
17 there's eleven.

18 Q Did you respond to a fire on October 3rd,
19 2012 at a residence located at 185 26th
20 Street Southeast in Massillon, Stark
21 County, Ohio?

22 A Correct.

23 Q When you respond to a fire, does each
24 individual fireperson, fireman have a job
25 or a duty when they go there?

1 A Yes, it depends on how we arrive or as we
2 take assignments at that point in time,
3 correct.

4 Q Okay. And on this particular fire, what
5 were -- what were your jobs and
6 responsibilities?

7 A I was the senior Captain so I took over as
8 a -- operations of the fire ground. The
9 Assistant Chief, he's the instant
10 commander, I take over operations of the
11 fire ground.

12 Q What does that mean?

13 A Means I take care of extinguishment fire,
14 overhaul, victims, controlling the -- of
15 the firefighters that are there, I do the
16 operational work.

17 Q Okay. So you basically -- would I be
18 correct in saying you run things?

19 A Correct.

20 Q Can you describe for the jury what you did
21 when you got there?

22 A When I got there, I was informed by the
23 pump operator that they had a basement fire
24 and that there was a crew in the basement
25 putting the fire out. The Assistant Chief

1 had went up the street to check on the
2 victims.

3 So I took over the operation, I
4 made sure that they -- I went to the head
5 of the steps, yelled down to the crew that
6 was down there do they have the fire out.
7 They said yes. And I said -- told -- had a
8 second crew coming in to set up ventilation
9 so we could get the smoke out of the
10 basement so we could see what we had going
11 on. And I got the third crew to come in to
12 go search the house just to make sure no
13 one was still in the residence.

14 Q Okay. After that, what did you do?

15 A Assistant Chief came back to me at that
16 point in time and told me that the lady --
17 the woman that was in the house was injured
18 and go up and check her and make sure she
19 was okay.

20 Q What did you do?

21 A I walked up to the neighbor's to the north,
22 the house to the north, seen a female
23 sitting on the porch with a towel wrapped
24 around her hand, a little girl that was
25 there holding a cat, and two or three

1 neighbors that were standing there. So I
2 talked to them. She said that the little
3 girl was not in the house at the time, she
4 had just came home on a bus. But the
5 little boy was in the house and the female
6 were in the house.

7 Q What did you do next?

8 A I said, Where's the boy at? He was inside,
9 they brought him out quickly. I looked at
10 him. He really didn't appear to be in any
11 distress, didn't really appear too much --
12 was in the fire very long so I really
13 wasn't too concerned about him --

14 Q Can I stop you real quick?

15 A Sure.

16 Q What -- did you notice anything about him
17 at all? Did you notice any exposure to any
18 kind of smoke or fire?

19 A Didn't appear to be, no. Didn't appear
20 that he had any soot or smoke on him. So I
21 really wasn't too concerned about him at
22 that time. Then I turned my attention to
23 the female.

24 Q Okay. And if I could stay with the little
25 boy a little bit longer, what did you do to

1 check him?

2 A Looked in his mouth and his face just to
3 see if he was discolored in any way, shape
4 or form because the amount of smoke that
5 was in the basement, I would have thought
6 if he was there, would have had
7 substantial -- because, I mean, smoke was
8 heavy, I couldn't -- I couldn't even -- at
9 the head of the steps, I had to have an air
10 bag on. I couldn't even go part way down
11 the steps because the smoke was that bad.

12 Q Okay. And you saw no evidence of any soot
13 or smoke which you would have expected to
14 see?

15 A No.

16 Q Now, you said you moved on to the female?

17 A Yes. I checked her, she had a cut on her
18 hand. I said, well, I was going to walk
19 her back down to our rescue squad that had
20 got there. So I took her back down to our
21 rescue squad. I asked her what happened.
22 She said that she was running with a glass
23 and fell, broke the glass, cut her hand. I
24 said, Where were you running? She said, I
25 was running upstairs to get my son. I

1 said, Okay. At that time I got her to the
2 rescue squad, turned her over to them.

3 I think she's the one that
4 mentioned to us did we find the dog. And I
5 said, What kind of dog? She said, A
6 smaller one. I said no, we hadn't at that
7 point in time. So I went and found two of
8 my crew members, told them to go back in
9 the house again and search to find the dog.
10 And they went back in and found the dog
11 laying in his bed. So they brought him out
12 to her, and the squad took over with her
13 and took her to the hospital.

14 Q Okay. Going to back up a little bit. Can
15 you describe the female's demeanor? How
16 was she acting?

17 A She was very confused to me. She wasn't
18 really talking appropriate. She was
19 confused of what was going on. She
20 had -- I mean, she -- you could obviously
21 tell she had been in the fire, she had a
22 little bit of soot on her and stuff so she
23 had obviously been in the basement. I --
24 no doubt that she had been down there, no
25 doubt she had broke something and cut her

1 hand because there was blood like on the
2 walls upstairs and stuff. So, I mean, I
3 really didn't think too much of it at that
4 point in time, I was more concerned getting
5 her to the rescue squad and getting back to
6 make sure we had the fire out.

7 Q Okay. Did you do anything else while you
8 were at the fire -- or while you were at
9 the scene?

10 A Then I waited for Inspector Winters to show
11 up. Once we had the fire knocked down, and
12 it's really not expanding, we wait for him
13 so that he can see things in their state
14 that they're in rather than us try to tear
15 stuff out. We try to remove everything
16 from the house to put the fire out.

17 So we waited for him. He came,
18 did his inspection and said I could finish
19 overhauling the house. At that point in
20 time we had to remove the upstairs
21 bathroom, the fire went up through the
22 floor had got into the walls in the
23 upstairs bathroom. We had to take out the
24 entire flooring, the toilet, everything
25 out, because, you know, fire spread -- fire

1 goes up, you know, it keeps climbing until
2 it finds its highest points. So we just
3 had to keep working at it. So we were
4 probably there a couple hours digging out
5 the fire that was in the house.

6 Q Was the little boy, the 3-year-old, was he
7 treated at all?

8 A I don't believe so, no, because he was
9 fine. The neighbor said she would watch
10 him and call us back if -- because I said
11 we were going to be there for the next
12 three or four hours so if he did develop
13 anything, please come get us immediately.

14 Q And there was no call back?

15 A No.

16 MS. SCHNELLINGER: Your Honor, may
17 I have a moment?

18 THE COURT: Yes.

19 MS. SCHNELLINGER: Thank you.

20 Your Honor. I have nothing further, thank
21 you.

22 THE COURT: Thank you.

23 Attorney Kuhn.

24 MR. KUHN: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. KUHN:

2 Q Good afternoon, sir, how are you today?

3 A Good, sir, how are you?

4 Q Not too bad, thank you.

5 You indicated you were at the
6 scene for a couple hours?

7 A I believe we were there a couple hours,
8 yes, I think.

9 Q Do you recall what time you arrived?

10 A No, I don't --

11 Q Do you recall what time you left?

12 A We were probably there three -- from the
13 time of the alarm, no, I don't really --
14 didn't really keep track of the times.

15 Q So when you say a couple or a few hours, do
16 you know, two hours, three hours?

17 A No, I can't -- time is not relevant at that
18 point in time.

19 Q Okay. Was it dark out while you were
20 there?

21 A Yes.

22 Q The whole time?

23 A It was early evening when we got there, I
24 think it was just getting dark, and it was
25 dark out when we left, yes.

1 Q Okay. Now I think you testified that my
2 client indicated that she cut her hand on a
3 glass?

4 A Correct, that's what she said.

5 Q Okay. And I think you said it was while
6 running upstairs that this occurred?

7 A She was running. I don't know whether she
8 was running up -- she was running to go
9 upstairs to find her son.

10 Q Okay. Is it possible she slipped while
11 still in the basement?

12 A Probably -- I didn't get into it. She
13 fell, she obviously cut her hand, and that
14 was my attention that she had a cut on her
15 hand.

16 Q Okay. And you indicated that somebody
17 else, is it Sergeant Winters? Is that his
18 title?

19 A Inspector Winters.

20 Q Inspector Winters?

21 A Correct.

22 Q You said he comes in and does an
23 investigation then; is that correct?

24 A Correct.

25 Q So that's not part of your job?

1 A No, sir. My job is to preserve the scene
2 until he gets there.

3 Q Okay. Did you enter the basement at all?

4 A Yes, sir.

5 Q Did you see a gas can laying around?

6 A I did not.

7 Q Did you see a lighter fluid container?

8 A Not to my recollection, no, sir.

9 Q Did you see anything like that?

10 A Not to my recollection.

11 Q Okay. And did you -- did you go on the
12 other levels of the house as well?

13 A I was on the first floor in through to the
14 bathroom, behind the kitchen to check for
15 extension.

16 Q Did you see any gas cans or lighter fluid
17 there?

18 A Not that I can recollect, no, sir.

19 Q Okay. Did you smell gasoline?

20 A I didn't because we had vented the place
21 out by the time -- I mean, I had a heavy --
22 heavy exhaust fan in the basement, had the
23 windows broke out. I mean, it was vented
24 out pretty clear when I went down.

25 Q Okay. You indicated that you felt there

1 should have been substantial soot on the
2 little boy if he had been down there?

3 A There should have been, correct. I would
4 assume that that much smoke in the
5 basement, yes, sir.

6 Q Okay. So anybody that was in the basement
7 would -- should probably have substantial
8 soot on them; is that right?

9 A Should have some soot on them depending on
10 the length of time they were in the
11 basement.

12 Q Okay. I think you said substantial soot;
13 is that right?

14 A Should have some soot on them, yes, if they
15 were in the basement, yes. If they had
16 been -- again, it depends on the length of
17 time they were down there. I don't know,
18 you know -- if they were there when the
19 fire immediately started and ran out, I
20 don't know. I mean, you just -- you know,
21 you just got to determine by the length of
22 time of exposure.

23 MR. KUHN: Okay. I think that's
24 all I have. Thank you.

25 THE WITNESS: Thank you, sir.

1 THE COURT: Thank you, Attorney
2 Kuhn.

3 Attorney Schnellinger or Attorney
4 Barr?

5 MS. SCHNELLINGER: I have nothing
6 further, Your Honor, thank you.

7 THE COURT: Okay. Does anybody
8 wish to reserve the right to recall this
9 witness?

10 MS. SCHNELLINGER: No, Your Honor.

11 THE COURT: Thank you, Officer,
12 you are excused.

13 MR. BARR: Officer Ricker.

14 THE COURT: Sir, do you want to
15 come up to the witness stand and raise your
16 right hand.

17 CURTIS RICKER

18 who, after being first duly sworn,
19 testified as follows:

20 THE COURT: Go ahead and have a
21 seat and just adjust the microphones so
22 they're a little close around your mouth so
23 we can hear exactly what you're saying,
24 okay?

25 THE WITNESS: Okay.

1 THE COURT: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BARR:

4 Q If you would, sir, state your name and
5 spell your last name for the court
6 reporter.

7 A My name's Curtis Ricker, last name spelling
8 R-I-C-K-E-R.

9 Q And by whom are you employed?

10 A City of Massillon Police Department.

11 Q How long have you been employed in that
12 capacity?

13 A Twenty-four years.

14 Q To what division or unit are you currently
15 assigned within that department?

16 A The patrol division.

17 Q How long have you been assigned to that
18 division?

19 A Nineteen of my twenty-four years.

20 Q The other five years, were you assigned to
21 the Detective Bureau?

22 A Yes.

23 Q Were you employed as a City of Massillon
24 Police Officer on October 4th, 2012?

25 A Yes, sir.

1 Q Do you recall the shift that you were
2 working that day?

3 A Day shift.

4 Q And day shift runs from when to when?

5 A 6 a.m. to 2 p.m.

6 Q Early on in the course of that shift, were
7 you asked to go to 185 26th Street
8 Southeast?

9 A Yes.

10 Q Is that located in the City of Massillon,
11 Stark County, State of Ohio?

12 A Yes.

13 Q Upon your arrival there -- well, first of
14 all, can you tell me what type of building
15 is located at that address?

16 A It's a private residence.

17 Q And upon your arrival there, were other
18 people present?

19 A Yes.

20 Q Do you recall who was present?

21 A Fire Investigator Reggie Winters of the
22 Massillon Fire Department. And I'm not
23 sure of the gentleman's name, he was an
24 occupant of the residence.

25 Q Okay. Approximately how long did you

1 remain there at the residence at that time?

2 A I believe somewhere in the area of 30
3 minutes.

4 Q And while there, did you learn that there
5 had been a fire there the night before?

6 A Yes.

7 Q After you leave, do you have an occasion to
8 go back to that residence?

9 A Yes.

10 Q And what brought you back to that
11 residence?

12 A I responded back to the residence upon
13 request of Sergeant Greenfield.

14 Q And he's your superior officer?

15 A Yes.

16 Q When you went back to that residence, what
17 were you asked to do?

18 A I was asked to interview Kayla Ayers
19 regarding a fire at that residence.

20 Q What steps did you take to make sure that
21 happened?

22 A We asked Miss Ayers if she would willingly
23 come down to the police department and talk
24 to us regarding the fire. She agreed to do
25 so. We did transport her down to the

1 station.

2 Q Did you transport her in your vehicle?

3 A Yes.

4 Q And when you get her to the station, where
5 do you take her?

6 A We took her down to the Detective Bureau.

7 Q Do you have rooms in the Detective Bureau
8 that people can sit in and wait?

9 A Yes.

10 Q And are those rooms equipped with audio and
11 video recording?

12 A Yes.

13 Q Now, did you interview her right away when
14 you got there?

15 A No.

16 Q What were you waiting on?

17 A We were waiting for Investigator Winters to
18 show up.

19 Q Approximately how long did it take for him
20 to arrive?

21 A Twenty, twenty-five minutes.

22 Q And after he arrived, did you then go into
23 that room and interview Kayla Ayers?

24 A Yes.

25 Q Before going in there, did you turn on the

1 recording equipment?

2 A Yes.

3 Q Was that equipment actually turned on when
4 she was first placed in the room?

5 A Yes.

6 Q So there was a period of about 20 to 25
7 minutes where nothing happened?

8 A That's correct.

9 Q And then you and Officer Winters went in
10 and spoke to Kayla?

11 A Yes.

12 Q And that was recorded with the machines at
13 the Massillon Police Department?

14 A Yes.

15 Q Have you used those machines before?

16 A Some of them.

17 Q Okay. Those machines on this day, were
18 they working properly?

19 A Yes.

20 Q I'm going to show you an envelope that is
21 marked as State's Exhibit 1. Do you
22 recognize that envelope?

23 A Yes.

24 Q What is that envelope?

25 A It's our evidence container that the disk

1 for the interview, the recorded disk the
2 interview was contained in and submitted to
3 evidence.

4 Q When you refer to the disk, you mean the
5 recording, the video and audio recording,
6 of your interview with Kayla Ayers on
7 October 4th, 2012?

8 A That's correct.

9 MR. BARR: Your Honor, I'd ask
10 permission to play the interview.

11 THE COURT: Yes. Ladies and
12 gentlemen, right now you're going to watch
13 a video of the interview in question. We
14 will adjust the lights and the blinds, but
15 you ever watch a movie on TV, it always
16 says, Edited for Content? Well, this video
17 you're going to be watching is edited for
18 content as well.

19 There have been prior rulings by
20 the Court with respect to playing this
21 videotape so you may notice some lapse in
22 time, or you may notice big pauses where
23 there's -- it sounds like maybe there
24 should be something said and you just can't
25 hear it. You're not to make any inferences

1 from the fact that there are pauses or
2 there's a time delay with respect to the
3 video.

4 This video has been obviously
5 edited for your approval and your content.
6 So, again, don't draw any inferences or
7 make any conclusions about what was cut out
8 or what should be playing. It is going --
9 it is being played in accordance with the
10 Court's ruling on the video, okay?

11 (Thereupon, the videotape
12 was played for the jury.)

13 THE BAILIFF: Sorry, Your Honor,
14 technical difficulties over here.

15 (Thereupon, the videotape
16 was played for the jury.)

17 BY MR. BARR:

18 Q Officer Ricker, you just sat and watched
19 that whole recording there. Is that a true
20 and accurate recording of your conversation
21 with Kayla Ayers on October 4th, 2012?

22 A Yes.

23 Q And the gentleman that was in that room
24 with you, that's Inspector Winters?

25 A That's correct.

1 Q And do you see Kayla Ayers here in the
2 courtroom, sir?

3 A Yes, I do.

4 Q Okay. Could you point to her and tell me
5 what she's wearing please?

6 A Wearing a black top, under the table looks
7 like brown slippers and white socks.

8 MR. BARR: Your Honor, ask the
9 record to reflect the identification of the
10 Defendant.

11 THE COURT: The record will so
12 reflect.

13 MR. BARR: Could I have a moment,
14 Your Honor?

15 THE COURT: Yes.

16 MR. BARR: No further questions,
17 Your Honor.

18 THE COURT: Thank you.

19 Attorney Kuhn.

20 MR. KUHN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. KUHN:

23 Q Good afternoon, sir.

24 A Good afternoon.

25 Q How are you today?

1 A Not too bad. A little warm.

2 Q Okay. That was a voluntary statement that
3 Kayla was giving you; is that correct?

4 A Correct.

5 Q And what date was that statement taken?

6 A I believe we said it was October 4th.

7 Q Okay. Do you recall the date of the fire?

8 A I believe it was the day before.

9 Q Okay. Was it the evening before?

10 A I believe so. I didn't respond to it.

11 Q And what time did she come into your
12 station and give that statement?

13 A I believe it was around 11:00, 11:30 maybe.

14 Q Okay. So maybe 14 hours after the fact?

15 A Roughly.

16 Q Okay. And you went out and collected Kayla
17 and brought her in; is that correct?

18 A Yes.

19 Q Okay. And that was at the request of, was
20 it Sergeant Greenfield?

21 A That's correct.

22 Q Okay. When she came -- well, let me back
23 up. Did you speak to her on the 3rd?

24 A No.

25 Q Okay. Did you see her on the 3rd?

1 A No.

2 Q Did you -- you went to the scene of the
3 fire, though, on the 3rd?

4 A Not on the 3rd, no.

5 Q You weren't there on the 3rd whatsoever?

6 A No, I was not.

7 Q Okay. And when you -- when you went out to
8 round up Kayla, you found her at the home
9 where the fire occurred?

10 A Correct.

11 Q Okay. Did you go inside that home?

12 A Yes.

13 Q Was there damage to the home?

14 A I could see what appeared to be minor smoke
15 damage, I'm not a firefighter, but we went
16 there because the house was being occupied
17 against the rule -- or the order of the
18 fire department. So I entered the side
19 door and was just in that room which
20 appeared to be like a dining room.

21 Q Okay. And did it smell like smoke?

22 A Yes.

23 Q Okay. Was there water from fire hoses?

24 A No, not that I had seen.

25 Q Okay. Did you go down to the basement at

1 all?

2 A No.

3 Q Okay. So you didn't do any sort of
4 investigation of the premises, did you?

5 A No, I did not.

6 Q Okay. Was your role in the investigation
7 really just limited to the interview we
8 just witnessed?

9 A Yes.

10 Q Okay. So you didn't speak to any other
11 witnesses personally?

12 A No.

13 Q Okay. You didn't speak to the little boy?

14 A No.

15 Q Okay. When you went to the home, was it --
16 did it appear to be cluttered?

17 A The room I stood in I didn't see any what
18 you would consider clutter I guess.

19 Q Okay. Did you smell gasoline?

20 A No.

21 Q Did you see any gas cans or lighter fluid
22 containers laying around?

23 A No.

24 Q Okay. You didn't do any sort of crime
25 scene investigation regarding, let's say,

1 the electrical wiring of the home, did you?

2 A No, I did not.

3 Q Okay. Okay. Would you say that in that
4 video Kayla denied purposely setting the
5 fire from start to finish?

6 A That question was never directly asked of
7 her. I don't think we got a direct answer
8 on how it started at all.

9 Q Okay. But she -- she denied purposely
10 starting that fire, correct?

11 MR. BARR: Objection, asked and
12 answered, Your Honor.

13 THE COURT: Sustained.

14 BY MR. KUHN:

15 Q Okay. Kayla said she assumed her son
16 started the fire, right?

17 A Yes.

18 Q Did she tell you her son was familiar with
19 cigarette lighters?

20 A Yes.

21 Q Kayla denied smoking any marijuana before
22 the fire, right?

23 A Correct.

24 Q Okay. And you guys kind of went round and
25 round, as Investigator Winters said, about

1 a couple different things really, right?

2 A Yes.

3 Q Okay. And one of which was maybe, what
4 does the word recent marijuana use mean; is
5 that right?

6 A Correct.

7 Q Okay. Kayla denied making any threats
8 towards her father; is that right?

9 A Yes.

10 Q And she said that any discrepancies between
11 what she was telling you and maybe what she
12 told Officer Muntean would be due to being
13 confused or mistaken; is that correct?

14 A Yes.

15 Q Okay. Eventually Kayla comes around and
16 says she may have fallen asleep; is that
17 right?

18 A Yes.

19 Q Do you frequently work with the fire
20 department out there?

21 A No.

22 Q Okay. Have you sort of done many arson
23 cases in your career?

24 A Nope.

25 Q Okay. Do you think this is the first one?

1 A I think I had maybe two others.

2 Q Okay. Were they a while ago?

3 A Yes.

4 Q Okay. And did you say you've worked in the
5 Detective Bureau as well?

6 A Yes.

7 Q Okay. And so are you trained in ways to
8 talk to folks and convince them to give you
9 information?

10 A No.

11 Q You don't have any training to -- on how to
12 interview witnesses or suspects?

13 A Nope.

14 Q There's no training whatsoever?

15 A I've never had training on that.

16 Q Oh, okay. You indicated in the video
17 there, I think one of the things you said
18 to Kayla was that you don't think she
19 purposely set fire to the house. Do you
20 recall saying that?

21 A Yes.

22 Q Were you lying at that time?

23 A No.

24 Q Okay. But you said you think maybe she did
25 carelessly sort of create this situation

1 where the fire occurred; is that correct?

2 A Possibly.

3 Q And even if the child had done it, it was
4 sort of due to this carelessness of Kayla;
5 is that correct?

6 A Potentially.

7 Q Okay.

8 MR. KUHN: That's all I have,
9 thank you.

10 THE COURT: Thank you, Attorney
11 Kuhn.

12 Attorney Barr?

13 MR. BARR: No questions, Your
14 Honor.

15 THE COURT: Okay. Would anyone
16 like to reserve the right to recall this
17 witness?

18 MR. BARR: No, Your Honor.

19 THE COURT: Attorney Kuhn?

20 MR. KUHN: I don't believe so.
21 Thank you, Judge.

22 THE COURT: Okay. Thank you,
23 Officer Ricker, you can step down, you are
24 excused.

25 THE WITNESS: Thank you.

1 THE COURT: Okay. Attorney Barr,
2 you want to call your next witness?

3 MR. BARR: Certainly, Your Honor.

4 THE COURT: If you feel the need,
5 ladies and gentlemen, to stand up and -- is
6 it too warm in here? A little? Some say
7 yes, some say no. We'll turn it down just
8 a little bit and see if maybe we get some
9 air going in here. And if it gets too
10 cold, just let us know and we'll adjust it,
11 okay?

12 MR. BARR: Your Honor, at this
13 time the State would call Firefighter Mike
14 Canfora.

15 MICHAEL J. CANFORA
16 who, after being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BARR:

20 Q Sir, if you would, state your name and
21 spell your last name for the court reporter
22 please.

23 A Michael J. Canfora, C-A-N-F-O-R-A.

24 Q And by whom are you employed?

25 A Yes, I'm employed at the City of Massillon

1 Fire Department.

2 Q How long have you been employed in that
3 capacity?

4 A Sixteen years in March.

5 Q Were you employed in that capacity on or
6 about the 3rd day of October in the year
7 2012?

8 A Yes.

9 Q Now, what kind of shifts do firefighters
10 work?

11 A Twenty-four hours on duty, forty-eight
12 hours off duty.

13 Q So if you're working on the 3rd of October,
14 you were on the 24-hour shift?

15 A Correct.

16 Q During the course of that shift, do you
17 recall at about 8:21 p.m. being dispatched
18 to 185 26th Street Southwest?

19 A Yes.

20 Q That's Massillon, Stark County, Ohio?

21 A Yes.

22 Q How far is that from your station?

23 A Approximately a mile and a half. A mile,
24 mile and a half.

25 Q Do you recall approximately what time you

1 may have arrived at the scene?

2 A I'm not real clear on exactly what time we
3 showed up, no.

4 Q What unit or what truck do you ride on to
5 get there?

6 A That evening I was in the back on engine
7 211.

8 Q And was engine 211 the first to arrive on
9 the scene?

10 A Yes, it was I believe.

11 Q So you arrive on the scene, what do you do?

12 A Me personally?

13 Q Yes, sir.

14 A I exited the truck, began getting my
15 personal protective gear in order, gloves,
16 hood, buttoning up. Another firefighter
17 grabbed the line, the hose line. I helped
18 flag out some hose, then I went to the door
19 with Captain Tyrell and we entered the
20 structure.

21 Q When you say flag out the hose, what's that
22 mean?

23 A When we pull it off the truck, it often
24 kind of ends up in a pile or something.

25 And for the water to get through all those

1 bends and kinks, you have to straighten the
2 line out.

3 Q So you get the line straightened out, you
4 go to the door with Captain Tyrell, and do
5 you recall which door you entered the
6 premises through?

7 A I believe it was the south entrance.

8 Q And when you open that door and you go in,
9 where are you at in the house?

10 A There was a small landing right in front of
11 us and to our right there was steps down,
12 and in front of us there was steps up.

13 Q Okay. Now as you enter that house, can you
14 tell where the fire is?

15 A We had a pretty good idea. We -- we could
16 tell something was going on in the
17 basement.

18 Q So is that the first place you go?

19 A Yes.

20 Q And what's it like visibility-wise as you
21 go down those steps?

22 A Smoke beginning to bank from ceiling down.
23 The visibility wasn't that poor, but was
24 beginning -- you know, was worsening as we
25 were in there. It banks from the top down

1 so it just takes the slow process of --

2 Q When you -- when you say it banks from the
3 top down, can you describe what you mean by
4 that to the jury here?

5 A The fire starts burning, the smoke
6 naturally rises. And if you're in an
7 enclosed room, what will happen is the
8 smoke will hit the ceiling and begin
9 spreading across the top of the ceiling
10 until it gets to the walls and then it will
11 start to bank down the walls, is what we
12 call it, until eventually predominantly the
13 entire room will fill if it's not vented
14 properly.

15 Q So banking down just means it can't go any
16 higher so it's going to come back --

17 A Right.

18 Q -- down towards the ground?

19 A Yes.

20 Q So the smoke's banking down. When you get
21 down to the steps, do you see any fire?

22 A No, not -- not initially, no.

23 Q What do you do?

24 A We had a left turn because there was a wall
25 to our right, there was a wall in front of

1 us. We were on hands and knees. We still
2 had some good visibility from about mid
3 room down so we could make out some
4 structures, like a clothes basket in front
5 of us. We went -- we advanced perhaps 15
6 feet, saw the orange glow of the fire, and
7 then turned and opened the hose on it.

8 Q Were you able to extinguish the fire at
9 that time?

10 A Yes.

11 Q Then what's the next step once you get the
12 fire extinguished?

13 A Once I shut the line down, Captain Tyrell
14 ordered me to stay in position and he came
15 out behind me to scout ahead for any more
16 open flame or hot spots or anything we may
17 have missed.

18 Q Did you locate any?

19 A We located a couple hot spots, glows.
20 Couldn't really tell, because of the smoke,
21 exactly what those things were. Could just
22 pick up some smoke and glow -- glowing from
23 little -- a couple locations. You know,
24 opened the line up real quick and hit
25 those.

1 Q Excuse me. Once you get all the hot spots
2 or the glows out, what's the next step, as
3 a firefighter, that you all take with
4 regards to that basement area?

5 A Ventilation to begin to start to clear that
6 smoke out of there.

7 Q And were you able to successfully ventilate
8 that area?

9 A Other firefighters did. I wasn't involved
10 with that.

11 Q Once -- once you do that, what's your next
12 involvement in this fire?

13 A My personal next involvement?

14 Q Yes.

15 A I exited the basement when my bottle --
16 there's an alarm on my bottle when my air
17 is running out. I exited, went back out to
18 the truck and got another bottle. And I
19 was assigned to another task on the first
20 floor after the basement. And I worked in
21 a bathroom on the first floor after that.

22 Q That bathroom that you worked in on the
23 first floor, was it above the area where
24 the fire had been extinguished?

25 A Yes, correct.

1 Q Was there damage to that second -- or that
2 first floor bathroom?

3 A Yes.

4 Q What kind of damage? Could you describe
5 that for these folks please?

6 A There was damage underneath the toilet.
7 The crew that was in there removed the
8 toilet, and where the flange and the drain
9 and all of that come through the floor, you
10 could see some charring, some black wood
11 around the floor around the hole there.

12 Q Is that what you all refer to as overhaul
13 after the fire is out, you go around and
14 look to see where there's any other hot
15 spots or damage that could have occurred?

16 A Pretty much. At that point I believe we
17 were still in an extinguish it --
18 extinguish mode where we were believing
19 that things had gotten into the walls and
20 ceilings. But, yes, it's pretty much all
21 part of overhaul.

22 Q Do you have to tear out walls sometimes?

23 A Yes, walls and floors and seals.

24 Q Did you have to tear out some walls in that
25 bathroom to make sure the fire wasn't

1 spreading?

2 A The bathroom I believe there were some
3 walls. I know the floor, we took a
4 chainsaw to the floor, and I believe we cut
5 a piece on the -- I wasn't the only one in
6 the bathroom, we would take turns.

7 Q Okay. You had -- you're not an arson
8 investigator?

9 A No, sir.

10 Q You're simply the guy that puts them out,
11 correct?

12 A Simply that guy, yes.

13 MR. BARR: Thank you. No further
14 questions.

15 THE COURT: Attorney Kuhn?

16 MR. KUHN: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. KUHN:

19 Q How you doing today, sir?

20 A Good afternoon.

21 Q You indicated that you're just sort of the
22 firefighter; is that correct?

23 A Correct.

24 Q And so you don't prepare any sort of report
25 after the fact; is that also correct?

1 A Correct.

2 Q Okay. When you arrived on scene, it sounds
3 like you were one of the main guys to get
4 in there and get down to the basement; is
5 that correct?

6 A Correct.

7 Q Could you see when you got down there?

8 A Partially.

9 Q Okay. Were -- I presume you're wearing a
10 mask?

11 A Correct.

12 Q Do you have a flashlight on your helmet or
13 anything?

14 A Not me in particular, I don't personally
15 have a flashlight. It hangs on my coat.

16 Q Okay. And so were you utilizing that at
17 the time?

18 A No.

19 Q Okay. Were there any lights on in the
20 basement?

21 A Not that I could see, no.

22 Q Okay. So what light there was, where was
23 that coming from?

24 A I believe it was coming from the origin of
25 the fire.

1 Q Okay. So just the glow of the fire?

2 A Correct.

3 Q Okay. And how long would you say you were
4 at the scene from first arrival until you
5 guys packed up and left?

6 A Boy, I definitely kind of lose time during
7 these things. I think we were there maybe
8 two hours.

9 Q Okay.

10 A A couple hours all told, I'm not really
11 sure.

12 Q Okay. Of that let's say two hours, how
13 much time do you think you were actually
14 inside the home?

15 A Oh, I'd say probably at least three-fourths
16 of that.

17 Q Okay. When you're in the scene of a fire,
18 do you look around for things that might be
19 of interest to the police or maybe your
20 investigator who does look into making a
21 report after the fact?

22 A We are taught to disturb as little as
23 possible until it's investigated, if
24 there's an investigation that's warranted.

25 Q Okay. Did you observe any gas cans?

1 A I did not.

2 Q Okay. Any lighter fluid containers?

3 A I did not.

4 Q Okay. Did you notice any smoke detectors?

5 A I did not.

6 Q Could you hear any going off?

7 A I did not.

8 Q Are you aware if there were in the house?

9 A No, I'm not.

10 Q Okay. Did the house appear to be
11 cluttered?

12 A No, I wouldn't say that.

13 Q Okay. So it didn't seem like a hoarder
14 lived there or anything like that?

15 A No, I wouldn't say that.

16 Q Okay. You didn't interview any witnesses
17 or anything like that, did you?

18 A No, sir.

19 Q Okay. Are you fairly certain the fire
20 started in the basement?

21 A I am certain there was fire in the
22 basement.

23 Q Okay. Were you involved in rescuing any
24 dogs or cats from the home?

25 A No, sir.

1 Q Did you smell gasoline at any point while
2 you were there?

3 A No, sir.

4 Q Did you speak with my client, Ms. Ayers,
5 while you were there?

6 A No, I did not.

7 Q Okay.

8 MR. KUHN: That's all I have.

9 Thank you.

10 THE COURT: Thank you, Attorney
11 Kuhn.

12 Attorney Barr?

13 MR. BARR: No, Your Honor, no
14 further questions, thank you.

15 THE COURT: Okay. Does anybody
16 wish to reserve the right to recall this
17 witness?

18 MR. BARR: No, Your Honor.

19 MR. KUHN: No, thank you, Judge.

20 THE COURT: Okay. Thank you, sir.
21 You may step down and you are excused.

22 Counsel, if you could approach for
23 a minute.

24 - - - - -

25 (A conference was held at the

1 bench outside the hearing of the
2 jury.)

3 - - - - -

4 THE COURT: Who do you have left?

5 MR. BARR: I have Inspector
6 Winters. He may be a little while so if
7 you want to take a little break right now,
8 now would be a good time.

9 THE COURT: It's just we can't go
10 past 4:30 today.

11 MR. BARR: I would like to at
12 least get him started. And if we have to
13 break, we have to break.

14 THE COURT: That's fine.

15 (End of conference at the bench.)

16 - - - - -

17 THE COURT: At this time we're
18 going to take a short recess, give you time
19 to stretch your legs, use the restroom, get
20 something to drink. We'll take about a ten
21 minute recess.

22 We are going to conclude today at
23 4:30. So we are going to try to get in one
24 witness as much as we can. To the extent
25 we don't finish with him today, we will

1 resume again with him tomorrow.

2 Tomorrow, just so that you know,
3 I'm going to ask you to report at 8:45 back
4 to the jury room and we'll get started
5 around 9, okay?

6 So during this break, do not
7 permit anyone to discuss the trial with you
8 or in your presence. Do not discuss the
9 case among yourselves. And do not form or
10 express any opinion on the case until it is
11 finally submitted to you.

12 And, again, we'll take about a 10
13 minute recess. According to my watch here,
14 it is 3:38 so at about 3:50 we'll meet you
15 in the jury room, okay?

16 THE BAILIFF: All rise.

17 - - - - -

18 (Court recessed at 3:38 p.m. and
19 reconvened at 3:53 p.m., and the
20 following proceedings were had.)

21 THE COURT: You may be seated, and
22 the State of Ohio may call its next
23 witness.

24 MR. BARR: Your Honor, at this
25 time the State would call Inspector

1 Winters.

2 REGINALD WINTERS

3 who, after being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BARR:

7 Q Sir, once you get situated, if you would
8 tell everybody your name and spell your
9 last name for the court reporter please.

10 A Reginald Winters, W-I-N-T-E-R-S.

11 Q And, Mr. Winters, what is your occupation?

12 A Fire Inspector/Fire Investigator.

13 Q How long have you been a Fire
14 Inspector/Fire Investigator?

15 A I've been -- five years with the City of
16 Massillon, been on the fire department for
17 ten.

18 Q And prior to your employment at the City of
19 Massillon, were you employed elsewhere as a
20 firefighter?

21 A Yes, sir, fifteen years with the City of
22 Orrville.

23 Q Now, if you would, could you tell these
24 ladies and gentlemen what a fire
25 inspector's duties are?

1 A Fire inspector's duties are we do public
2 safety. We also go through commercial
3 buildings ensuring safety, making sure the
4 fire extinguishers, exit lights are lit,
5 and we also give approval for new buildings
6 and stuff like that. We work with the
7 building department. We also are in charge
8 of fireworks, certifying them and stuff
9 like that, to inspect the site to make sure
10 it's safe for the community.

11 Q How about the other part of your job
12 description that you previously entail --
13 detailed that you had, would you explain
14 that to these folks?

15 A As a Fire Investigator, my job is to come
16 in and determine origin and cause. The
17 cause being what happened, the origin is
18 where the fire started at.

19 Q Did you have to undergo specialized
20 training in order to hold a position as
21 that of which you just described?

22 A Yes, sir.

23 Q What type of training, first of all, did
24 you have to undergo?

25 A First of all, I had to get my certified

1 Fire Inspector. You have to be a certified
2 Fire Inspector. And then from there you
3 have to -- it's two steps. You have a
4 basic Fire Investigator and then you have
5 an advanced Fire Investigator course you
6 have to take.

7 Q Let's talk about the certified Fire
8 Inspector training first. What does that
9 entail?

10 A That entails looking at multiple burn
11 scenes, learning the scientific methodology
12 of how different things burn as far as
13 oils, gases, electrical fires, the
14 synthetic fires as far as people using open
15 flames to fires, candles, paper. And we
16 look at the different patterns the fire
17 makes, the different charring of wood and
18 stuff like that to make our determination
19 whether -- what caused the fire, whether it
20 was mechanical, accidental, or incendiary.

21 Q Do you have to go to classes for that?

22 A Yes, sir.

23 Q And how long were those classes?

24 A My first class as a basic investigator, it
25 was 32 hours. The second part of advanced

1 was -- it was 40 hours.

2 Q Did you successfully complete all those
3 classes?

4 A Yes, sir.

5 Q And then at the end of those classes, do
6 you have to take a test?

7 A Yes, sir.

8 Q And did you successfully pass all those
9 tests?

10 A Yes, sir.

11 Q So you are now a certified arson
12 investigator?

13 A Yes.

14 Q And that's within the State of Ohio?

15 A Yes, sir.

16 Q Once you complete that training, do you
17 have to continue to update your education?

18 A Yes, sir.

19 Q What do you have to do?

20 A We have to -- well, we take like different
21 seminars. One seminar I attend is the
22 International Firefighters Association of
23 Arson Investigators in Columbus. It's an
24 annual Fire Investigator course week long.
25 We have to maintain 32 hours in a three

1 year period of continuing education.

2 Q And as you sit here today, are you current
3 in all your requirements to be a certified
4 arson investigator?

5 A Yes, sir.

6 Q You indicated that you've held that
7 position with the Massillon Police [sic]
8 Department for five years. Could you
9 estimate the number of fires you've
10 investigated within those five years?

11 A I would say approximately 30.

12 Q And have you testified before in the courts
13 of Stark County as an expert in the cause
14 and origin of fires?

15 A Yes, sir.

16 Q And has that testimony been accepted by the
17 courts?

18 A Yes, sir.

19 MR. BARR: Your Honor, I'd offer
20 Inspector Winters as an expert at this
21 time.

22 THE COURT: Thank you. Based upon
23 the testimony, I do find the witness is
24 qualified to render opinion testimony.

25 MR. BARR: Thank you, Your Honor.

1 BY MR. BARR:

2 Q You talked about all the training you went
3 through, Inspector Winters.

4 A Yes.

5 Q And is that because there are certain ways
6 that fires burn that can tell you how a
7 fire started?

8 A Yes, sir.

9 Q Could you explain that to these folks in
10 terms that they could understand maybe?

11 A What we look for is what we call a fire
12 pattern which is a V-pattern. That would
13 indicate where a fire started at, it would
14 also show the heaviest where -- we look for
15 the heaviest spot that fires burn. There
16 is some times where a fire has burnt so hot
17 that we look at it as undetermined.

18 But the biggest tell-tale sign for
19 us that we look for is a fashionable
20 V-pattern is a tell-tale sign, which it
21 goes out and then it mushrooms up. And
22 then we also look at like the ceiling
23 because that would also indicate where a
24 fire burnt the hottest as far as the
25 degrees and stuff like that. Each fire has

1 its own tell sign. We look at what's
2 there, whether it's electric, whether it's
3 gasoline, whether it's natural gas. We try
4 to rule out everything before we make our
5 determination of that fire.

6 Q What are the three things a fire needs to
7 burn?

8 A It needs fuel, oxygen, and heat.

9 Q And you indicated earlier that part of your
10 job was determining whether a fire was
11 incendiary, or accidental, or undetermined?

12 A Yes.

13 Q What does incendiary mean?

14 A Incendiary means open flame, whether it's a
15 lighter, whether it's a torch, whether it's
16 a match. That means somebody has took an
17 open flame and put it to that product in a
18 lineal fire.

19 Q How about accidental, what's that?

20 A Accidental is when maybe I -- I put a
21 cigarette butt out in the trash can and
22 forgot about it, or I fell asleep with it.
23 Or I knocked the candle over. Or the dog
24 knocks something over. Or I left something
25 on the stove and ran down to the store.

1 And that's what we look at as accidental
2 as we do an investigation, do the interview
3 with the homeowners or occupant of the
4 residence.

5 Q And then there's also a fire -- I think you
6 mentioned a fire using accelerants?

7 A Yes.

8 Q What would an accelerant be?

9 A Accelerant would mean like gasoline, some
10 kind of type of ignitable liquid, lighter
11 fluids, you know, using a propane tank, any
12 kind of thing that's ignitable that you
13 take an open flame to and you can ignite it
14 to burn fast. And usually with ignitable
15 liquids, they burn hotter faster because
16 the gas will burn, give you a flash fire
17 where it will ignite fast. Because of the
18 vapor density of it, it will flash and it
19 will go out automatically.

20 Q Have you been to fires where gasoline and
21 other accelerants were used?

22 A Yes, sir.

23 Q And even though the fire's been
24 extinguished and the gas is all burnt, can
25 you still smell the gas in the room?

1 A Yes, we usually -- I was at one that I can
2 tell you about that I was there and as soon
3 as we walked in, you could definitely smell
4 a strong odor of gasoline that had been
5 used with a trail and stuff like that.

6 Q Have you been to fires where, say, a
7 cigarette was left on a mattress?

8 A Yes.

9 Q And have you been able to find any portion
10 of that cigarette that's left behind after
11 the fire has been extinguished?

12 A Yes, a cigarette butt. A cigarette butt
13 will -- either the fibers that they use to
14 make a cigarette, the synthetics in it,
15 that usually melts and it melts in a form
16 of where it's like a hard -- I describe it
17 as far as like plastic. Fibers like a
18 fiberglass kind of type of material where
19 it burnt hard and it's still in the shape
20 of a cigarette except it will curl up.

21 Q So even though the mattress is burnt, you
22 can still dig through that mattress and
23 find a cigarette butt?

24 A Yes, sir. Yes.

25 Q When -- as an arson investigator, when

1 you're asked to determine a cause and
2 origin of a fire, do you have a certain
3 procedure that you follow when you go to a
4 scene?

5 A Yes.

6 Q Could you tell us what that procedure is?

7 A Once I'm dispatched to a scene, I meet with
8 the officer in charge. I will get a brief
9 description of what's going on, where the
10 fire started at, who was there, and stuff
11 like that. I won't talk to any other
12 occupants, I won't talk to no other
13 firefighters. I will do a visible
14 clockwise around the area, whether it's a
15 house -- I'll walk around the house, look
16 at it, I will go through the house inside,
17 do a walk-through. Then I will go back
18 out, I will grab my camera and I will
19 photograph starting from the front of the
20 house. In the fire service, we label each
21 side of the house; we use A, B, C, D side,
22 and that's how we determine who's in charge
23 of the area.

24 So I'll start at the A side and go
25 clockwise if it allows me to walk all the

1 way around the house. Or I will do a
2 clockwise then come back and also
3 photograph. And then I will also
4 photograph the entire house from upstairs
5 to downstairs to the basement, depending on
6 the different levels.

7 And then from there I will go
8 ahead and I will start my investigation
9 wherever the origin is at of the fire. And
10 I will determine by going through and I
11 do -- we do it through a process of
12 elimination. We're eliminating electric, I
13 will look at the electrical panel and
14 determine if any breakers are kicked in
15 that area. I will look for any gas
16 hookups, see if there's any kind of gas
17 leaks in there. I will look for any kind
18 of things that look suspicious as far as
19 lighters. As far as gasoline, you can
20 pretty much smell and stuff like that is
21 how we do everything that go there.

22 Once I come up with my
23 determination, then I will go out and find
24 the resident and I will talk to them to see
25 what their story is and try to put this

1 together because it's all a puzzle when we
2 are figuring it out. We're going there to
3 investigate. Nobody's guilty until we
4 figure out what it is. Once we determine
5 it's arson, then we also notify the
6 Massillon PD and they work with us hand in
7 hand.

8 Q Why is it that you don't talk to anybody
9 before you go in except the Chief or the
10 firefighter in charge?

11 A I don't want somebody to put something in
12 my head that's not there or their
13 assumption of what they think it is. I
14 want to be able to give the accurate --
15 most accurate, my decision, what I came up
16 with without being altered by anybody else.

17 Q Were you called out on October 3rd, 2012
18 and asked to respond to a residence located
19 at 185 26th Street Southwest in Massillon,
20 Stark County, Ohio?

21 A Yes, sir.

22 Q Do you recall where you were at when you
23 got that call?

24 A I was at home.

25 Q Okay. And what do you do after you get the

1 call?

2 A Usually what I do is I -- depending on if
3 I'm doing something in the house or
4 whatever, make sure that was done, I'll get
5 in my personal vehicle and drive to the
6 station.

7 Once I get to the station, I'll
8 gather up everything that I need. Most of
9 the time everything's in my vehicle, but
10 I'll make sure I don't need no pencil,
11 paper, extra whatever. And then I'll jump
12 in my vehicle and I'll notify dispatch that
13 I'm en route to the scene.

14 Q When you arrived on the scene, do you
15 recall approximately what time it was that
16 evening?

17 A It was 2148 which was 8:48.

18 Q 8:48 p.m.?

19 A p.m.

20 Q And who did you talk to when you arrived on
21 the scene?

22 A Upon arriving on the scene, I met up with
23 Captain Annen. At that time he had advised
24 me that they had had a basement fire where
25 a mattress was at, and there were two

1 occupants in the house at the time of the
2 fire.

3 Q So after receiving that information, what
4 do you do?

5 A I -- he had also advised me that one of the
6 occupants had cut their hand and had been
7 transported to the hospital. After that I
8 went on ahead and I grabbed my camera and
9 started with my clockwise outside. And
10 then I went down to the fire scene where
11 the fire was at, checked that out, went
12 back upstairs, took pictures of the first
13 floor, then I went up to the second floor,
14 photographed it. Then I went back down to
15 the basement, checked it out. I went back
16 to my truck and grabbed some equipment,
17 some digging tools and stuff like that I
18 use to sift through the fire.

19 As I was also photographing, I
20 photographed the electrical meter which was
21 right at the bottom of the steps, I also
22 photographed the electrical panel. The
23 electrical panel I photographed due to see
24 any electrical breakers that had been
25 kicked due to a shortage or something like

1 that. There was no breakers kicked at that
2 area. So I proceeded on over to the bed
3 which was located on the west wall of the
4 basement.

5 Q What did you observe about that bed?

6 A It was -- the mattress was fully engulfed
7 with flames. The box spring was still
8 intact, but it still had a little bit of
9 covering on it and stuff like that, but it
10 was charred on top of it.

11 Q Did you then conduct an examination to
12 determine if you could find the origin of
13 that fire?

14 A Yes. We -- I had checked the top of the
15 spring which was much -- not left of
16 anything. We also raised the spring, took
17 the spring up slowly, had the guys lift it
18 up for me, and I combed the area looking to
19 see if I could see any residue because
20 there was signs of cigarette butts like
21 somebody had smoked. They were on the
22 nightstand with the lighter. So I checked
23 that area to make sure nobody didn't fall
24 asleep in bed or somebody throw a cigarette
25 and it was succinctly dropped.

1 Q Did you find anything in your search that
2 would indicate to you this was a result of
3 a cigarette being left on the mattress?

4 A No, sir.

5 Q What other steps did you take after you
6 observed those findings?

7 A After that I stepped back, I looked and I
8 started looking at the mattress springs
9 itself, and I started noticing the mattress
10 itself had an unusual burn pattern to it.

11 Q What do you mean by unusual burn pattern?

12 A Well, I had noticed that the -- which would
13 have been the east end of the bed, towards
14 the east end on the north side, had a
15 heavier char pattern where the springs --
16 what we call -- I'll try to explain it to
17 you, it's called calcination. It's
18 basically where the fire burned so hot that
19 it will turn the springs white and they'll
20 collapse. And on that end I had noticed
21 where the fire had burnt the hottest and it
22 traveled westward. Like it was -- that's
23 where, right there, made a conclusion that
24 I had a fire start there that was low and
25 it started there and traveled west toward

1 the wall because that's where the material
2 was at, that it was consuming as it was
3 burning.

4 Q Okay.

5 A Upon that I found a V-pattern where the
6 mattress on the south was a post that was
7 up against it, which was a low V-pattern,
8 which I thought was, okay, out of the
9 ordinary.

10 Q Okay. When you say "out of the ordinary,"
11 what do you mean by that?

12 A There was a makeshift door between the post
13 and the bed that looked like an area that
14 was cordoned off for like a little play
15 area, but the area itself didn't look like
16 it was habitable for anybody to be playing
17 in it because it was an open drain there
18 with no cover overtop of it.

19 So once I continued further
20 investigating, I noticed that the burn was
21 real low, the post sat on probably a 6-inch
22 concrete pad that was right in line with
23 the bottom of the box spring, met up
24 together, and somebody would have to lean
25 over, light that area too. And so at the

1 same time when that area started burning,
2 it burnt up and it burned across the bed
3 leaving a perfect V-pattern that way, too.

4 Q So the portion of the bed where you saw the
5 springs, I think you referred to it as
6 oxidizing?

7 A Calcination.

8 Q Calcination?

9 A Yeah.

10 Q Okay. From the fire starting at that
11 point, this point over here by the pole,
12 were two different points of origin?

13 A Yes, sir.

14 Q Inspector Winters, I'm going to put up on
15 this screen, and it should hopefully, if I
16 know how to do this, show up right in front
17 of you.

18 A Okay.

19 Q Try to -- this is marked as State's Exhibit
20 3C. Do you recognize that photograph?

21 A Yes, sir.

22 Q Okay. Now, you described an area that you
23 referred to as calcination?

24 A Calcination where --

25 Q Can you describe that in what's depicted in

1 this photograph for me? And if you need
2 that little stylus, there's a little stylus
3 there, you can actually draw on the screen.

4 A Okay.

5 Q I hope. Is it working? There you go.

6 A (Witness drawing on the screen.)

7 Q Can you all see that?

8 A Just go softly. Right here, where I got
9 this green line at, that's going to be the
10 indication right there where I was talking
11 about, the east end of the bed. As you can
12 see right there, the springs, how they're
13 collapsed, you can see where it's buckling
14 at, down through there, that's where the
15 springs collapsed, where it burnt the
16 hottest. You can also see the wood on the
17 box spring and see where it had burnt the
18 hottest there, where a fire had been
19 started right in that area there.

20 Q So that evidence that you see there
21 indicates to you what as in regards to the
22 origin or the beginning point of this fire?

23 A That right there gives me a origin spot of
24 the fire.

25 Q Okay. I'm going to show you what's been

1 marked as State's Exhibit 3D. Can you tell
2 me what's depicted in that photograph? Let
3 me get those green lines off of there for
4 you.

5 A Yes. Up top, on the west end of the bed
6 against the wall there, that was a bean
7 bag.

8 Q That large lump?

9 A That large lump was a bean bag filled with
10 feathers.

11 Q And we're talking about this area?

12 A Yes.

13 Q Okay.

14 A And then over on the south wall, we got the
15 west wall and then you look over to the
16 left, there's a wood post you can see right
17 there.

18 Q And that's this area?

19 A Yes.

20 Q Okay.

21 A Right there was another origin. Below
22 there, once we removed the mattress spring
23 and the box spring, you have a clear point
24 of a V-pattern.

25 Q Okay. Let me show you what's been marked

1 as State's Exhibit 3E. Now, is that the
2 bed frame after the mattress and box
3 springs had been removed?

4 A Yes, sir.

5 Q Okay. And what's this area here?

6 A That area right there is where, as you can
7 see, there's water droplets right there.
8 There was a soil pipe that went to the
9 upstairs bathroom, that melted and
10 water -- that was full of water. So when
11 the plastic melted and burnt down, that
12 caught fire right here on top of that bean
13 bag. It didn't go anywhere, it pretty much
14 stopped there and started burning upward.
15 So we had to rule that out that that wasn't
16 the cause of the fire.

17 Q And this post over here is the post you
18 referred to in the previous picture?

19 A Yes. If you look at it, you have the
20 concrete floor, you go up and you have
21 concrete, kind of pyramid, and then right
22 there you can see a clear point of the
23 V-pattern that I was telling you about, the
24 starting point right there, the origin.

25 Q And I'll show you what's been marked as

1 State's Exhibit 3F. Is that a close-up of
2 that?

3 A Yes, sir.

4 Q And when you talk about the V-pattern, are
5 you referring to this area right in here?

6 A Yes.

7 Q And that indicates what to you as a
8 trained -- or a certified arson
9 investigator?

10 A That is telling me the point of origin of a
11 fire consistent where the fire started. It
12 started low and it started climbing the
13 post with the heavy charring and stuff like
14 that.

15 Q Does fire burn down?

16 A No, not necessarily. You will have a drop
17 down, but a fire is not going to burn
18 across and then down, down, downward.

19 Q So the other side of the bed, the other
20 corner where the calcination was, couldn't
21 have caused this damage over here to this
22 post?

23 A No.

24 Q And I want to show you what's been marked
25 as State's Exhibit 3G. And what's depicted

1 in that photograph?

2 A This is the box spring, this is -- which
3 is -- the S is marking the south side where
4 that was the side that was against the
5 wooden post. You can see here where the
6 fire started, but it also started burning
7 outward. This was all protected, this area
8 right here was protected by the mattress.
9 So this is radiant heat damage right here,
10 got some charring along the wood frame
11 there where the fire burnt out that way and
12 it didn't go no farther. You can actually
13 see on the north side the pattern that the
14 fire took on the north side of the wall and
15 the mattress.

16 Q Okay. So if we were to put the mattress on
17 top of here as it was in the basement, this
18 side over here would be where the
19 calcination occurred?

20 A Yes.

21 Q And then this side over here would be the
22 pole where the V-pattern was?

23 A Yes.

24 Q Do those photos truly and accurately depict
25 what you observed on October 3rd of 2012?

1 A Yes, sir.

2 Q Just show you this, what's been marked as
3 State's Exhibit 3I, and direct your
4 attention to this area of the photographs.
5 What's depicted up there?

6 A That is a picture of the rafters and the
7 floor joists on the first floor. That
8 right there, just above that, was a
9 restroom on the first floor that the fire
10 had what we call extension, it had impinged
11 in between the wood and the pipes in the
12 crawl space that went up through that the
13 guys had to extinguish the fire on the
14 first floor.

15 Q This area here, would it had to have all
16 been replaced after this fire?

17 A Yes.

18 Q Okay. Did you, while you were in that
19 basement, notice the odor of any
20 accelerants?

21 A None at all. Not even natural gas, a
22 natural gas smell or anything like that,
23 any kind of leak.

24 Q And you indicated that you checked the
25 electrical panel?

1 A Yes.

2 Q And it was fine?

3 A The electrical panel, we didn't get any --
4 didn't see any kind of arcing wires. There
5 was some electrical above that area, but
6 that was all due to the radiant heat and
7 the flames coming up from the bottom up.

8 Q And the gas line was intact?

9 A The gas line was not attacked. Our water
10 line got attacked due to the fire, the
11 water line had heated up and had melted and
12 broke. That's actually what put some of
13 the fire out.

14 Q I think you misunderstood my question.

15 A I'm sorry.

16 Q The gas line was intact, there were no gas
17 leaks --

18 A Yeah, the gas line was intact. I'm sorry,
19 sir.

20 Q That's all right. So based upon the
21 investigation and your training, your
22 education and experience, did you, to a
23 reasonable degree of scientific certainty,
24 form an opinion as to the origin and cause
25 of this fire?

1 A Yes.

2 Q Okay. And how many origins were there?

3 A There were two.

4 Q And that's based on your certified arson
5 opinion?

6 A Yes.

7 Q And what was the cause of this fire?

8 A The cause of the fire was incendiary, it
9 was open flame. A person or persons with
10 the act of open flame started this fire.

11 Q So it wasn't a cigarette butt left on a
12 mattress?

13 A No.

14 MR. BARR: Your Honor, I think
15 this might be a good time to stop right
16 here, if you don't mind.

17 THE COURT: Okay. Very good.
18 That's fine.

19 All right. Ladies and gentlemen,
20 we are going to adjourn for today and we'll
21 start back up tomorrow morning with the
22 continuing testimony from Inspector
23 Winters.

24 But, again, I'm going to remind
25 you that during the evening recess do not

1 permit anyone to discuss the trial with you
2 or in your presence, do not discuss the
3 case among yourselves, and do not form or
4 express any opinion on the case until it's
5 finally submitted to you.

6 And this is probably the hardest
7 time to abide by this instruction because
8 you're all going to go home and everyone's
9 going to wonder, what did you do today?
10 What kind of case are you on? You know,
11 who's involved? And at this point in time
12 I'm going to take the blame, just tell them
13 that the Judge said I can't talk about it.
14 And she said that, you know, I'm prohibited
15 from talking about it. Once the trial is
16 over, I'll be happy to tell you all about
17 it, but I just can't talk about it right
18 now.

19 And, again, more importantly as
20 well is my instruction in the beginning
21 that you're not to look at any newspaper
22 articles about this case, read anything
23 about it either on the Internet or do any
24 sort of research on your own. You are
25 prohibited from doing that and you have

1 taken an oath not to do anything like that.
2 So don't read anything in the newspaper
3 about it, don't let anybody tell you about
4 it, don't look up anything or any of the
5 terms related to this. And just pretty
6 much stay off the Internet because you
7 never know what you might find when you
8 start looking.

9 With that, we are adjourned for
10 the day. And, again, if you could report
11 at 8:45 tomorrow and we will start back up
12 at 9, okay? Have a good evening.

13 THE BAILIFF: All rise.

14 (Thereupon, the jury exited
15 the courtroom at 4:21 p.m.)

16 MR. KUHN: Judge, one very brief
17 matter if I could please.

18 THE COURT: Sure.

19 MR. KUHN: If you could just
20 instruct the State's witness that he's not
21 to speak with Prosecutor Barr. I'm sure
22 they wouldn't do anything improper, but
23 maybe he's not aware of that.

24 THE COURT: Okay. And I'm sure,
25 Attorney Barr, you'll explain that to him?

1 MR. BARR: Yes, Your Honor, I
2 will.

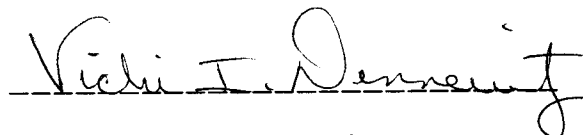
3 MR. KUHN: Thank you, Judge.

4 THE COURT: Sorry I had to have
5 you here all day, Inspector Winters, now
6 tell you you can't talk to anybody, but
7 we'll see you first thing tomorrow, okay?
8 Thank you.

9 - - - - -
10 (Thereupon, court adjourned at
11 4:22 p.m. on January 28, 2013)
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C-E-R-T-I-F-I-C-A-T-E

I, Vicki I. Dennewitz, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, do
hereby certify that I reported in Stenotypy
the testimony had; and I do further certify
that the foregoing is a true and accurate
transcription of said testimony.


Vicki I. Dennewitz, RPR

All exhibits are being held by the
Evidence Administrator and are available
upon advance request.

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 2012 CR 1567

2013 CA 00034

STATE OF OHIO,)
)
Plaintiff,) TRANSCRIPT OF
) PROCEEDINGS
versus)
)
KAYLA J. AYERS,) VOLUME NO. II
)
Defendant.)

2013 MAR 27 AM 11:33

CLERK OF COURTS
STARK COUNTY, OHIO

BE IT REMEMBERED, That upon the
hearing of the above entitled matter in the
Court of Common Pleas, Stark County, Ohio,
before the Honorable Kristin G. Farmer,
Judge, and commencing on January 29, 2013,
the following proceedings were had:

- - - - -

VICKI I. DENNEWITZ, RPR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

1 APPEARANCES:

2
3 On Behalf of the Plaintiff:

4
5 Stark County Prosecutor's Office

6
7 Dennis Barr, Assistant Prosecutor

8 Toni Schnellinger,

9 Assistant Prosecutor

10 Stark County Office Building

11 Suite 510

12 Canton, Ohio 44702

13
14 On Behalf of the Defendant:

15
16 Stark County Public Defender's Office

17
18 Matthew Kuhn, Attorney at Law

19 April Bible, Attorney at Law

20 201 Cleveland Avenue South

21 Canton, Ohio 44702

22

23

24

25

I N D E XSTATE'S WITNESSES

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>FDX</u>
Reginald Winters	259	278	296		
Jeff Ayers	306	313			
Brennan Scott	320	329			
Jason Pandrea	333	341			
Jennifer Conley	353	366			
Karen Ball	370	390			

STATE RESTS: Page 393

DEFENSE RESTS: Page 394

CLOSING ARGUMENTS:

By Ms. Schnellinger &

Mr. Barr Pages 420 & 449

By Mr. Kuhn Page 435

I N D E X C O N T I N U E D

CHARGE OF THE COURT Page 404

STATE'S EXHIBITS

	<u>MARKED</u>	<u>RECEIVED</u>
Exhibit 1		
(Audio recording)	B/A	399
Exhibit 1A		
(Unedited statement)	B/A	N/O
Exhibit 2		
(Jail calls)	B/A	399
Exhibit 3A-Q		
(Photos)	B/A	399

DEFENSE EXHIBITS

	<u>MARKED</u>	<u>RECEIVED</u>
Exhibit A (Report)	B/A	N/O
Exhibit D (Executive Summary)	B/A	N/O
Exhibit E (Statement)	B/A	N/O

B/A = By Attorney

N/O = Not Offered

- - - - -

P R O C E E D I N G S

- - - - -

(Thereupon, the jury entered
the courtroom at 9:10 a.m.)

THE COURT: Okay. Good morning,
and you may be seated.

Nice to see everyone came back. I
hope that you all had a good evening and
that nobody gave you too hard of a time
about not being able to talk about this
case.

But at this time we're going to
resume with the testimony of Inspector
Winters.

MR. BARR: Thank you, Your Honor.

THE COURT: Good morning,
Inspector Winters, you can have a seat up
there. And I'll remind you that you're
still under oath with respect to your
testimony, okay?

DIRECT EXAMINATION-Continued

BY MR. BARR:

Q Good morning, sir.

A Good morning.

Q I think when we left off yesterday, you had

1 just indicated to the jury your opinion in
2 regard to the scene and the cause and the
3 origin of the fire at 185 26th Street
4 Southwest. After reaching that conclusion,
5 did you leave the scene?

6 A Yes, I did.

7 Q And where did you go?

8 A I went to Affinity Hospital.

9 Q Who was present at Affinity Hospital?

10 A Kayla Ayers.

11 Q Was anybody else present with Miss Ayers at
12 that time?

13 A When I arrived at the hospital, no. It
14 was -- also I had a Sergeant Muntean from
15 the Massillon Police Department meet me
16 there, too.

17 Q All right. Was she being treated for an
18 injury?

19 A Yes.

20 Q What was that injury?

21 A She had a laceration on her thumb and on
22 her index finger.

23 Q While at the hospital, did you have an
24 occasion to speak to Miss Ayers?

25 A Yes, I did.

1 Q And do you see Miss Ayers here in the
2 courtroom, sir?

3 A Yes, I do.

4 Q Could you point to her and tell me what
5 she's wearing?

6 A She is wearing a black sweater and jeans.

7 MR. BARR: Your Honor, ask the
8 record to reflect the identification of the
9 Defendant.

10 THE COURT: The identification is
11 so reflected on the record.

12 BY MR. BARR:

13 Q Could you tell the jury the content of that
14 conversation that you had with Miss Ayers
15 at the hospital?

16 A Yes. When I arrived there, I introduced
17 myself, told her who I was, Investigator
18 Winters from the Massillon Fire Department,
19 I was doing an investigation of her fire.
20 I asked her what happened, what was in the
21 basement. She said she was in the basement
22 folding clothes at the time and she had
23 noticed her son, Bubba, which is Brennan
24 Junior Scott, he was over at the bed
25 playing with a lighter.

1 I asked her at that time did she
2 ever try to get the lighter back at any
3 time --

4 THE COURT REPORTER: I'm sorry?
5 I'm sorry, I didn't hear that part. I
6 asked her at that time did she ever try to?

7 THE WITNESS: To attempt to --
8 make an attempt to get the lighter from
9 him. And she stated -- did not reply at
10 that time.

11 I also presented to go ahead and
12 asked her -- after that I asked her what
13 alerted her of the fire. She said she seen
14 a red glow. And I asked her to describe
15 the size of the fire, and she said it was
16 about the size of a cup, real small.

17 And so I said, What did you do
18 once you seen the fire? She said she
19 grabbed a blanket and she started fanning
20 it. And she said when that didn't work,
21 she ran over to the washing machine,
22 grabbed a glass of water and threw it on
23 it. I said, What happened then? She goes,
24 It didn't go out. So she goes, I ran back
25 and she got another glass of water. And on

1 the way back to the bed, she tripped and
2 fell with the glass in her hand and that's
3 how she sustained a cut on her hand.

4 So then I asked her, I said -- I
5 asked her where -- the point that she was
6 standing at the dryer, how can she see
7 Brennan playing with a lighter due to the
8 chimney, the hot water tank, and the
9 furnace blocking that view where the
10 bedroom -- the bed was set up on the west
11 wall. She paused for a second and said she
12 didn't know. So I said, Okay.

13 I asked her where was Brennan at
14 the time of the fire. And she said he was
15 standing at the bed. And I said, Okay.
16 Then what happened next? And she said,
17 Well, he was with me the whole time, he
18 never left with me so he was in there the
19 whole time that the fire was going and
20 stuff like that. And then she also made
21 the statement that the fire grew in size
22 quickly.

23 I said, At that time did you think
24 about alerting the fire department? She
25 said she could not find her phone. I said,

1 Did you think about getting out of the
2 house? She said that -- she didn't
3 answer any -- didn't respond. Her stories
4 kept changing the entire time while I was
5 interviewing her.

6 She was more lethargic, as I
7 recollect, on her vitals. Her pulse was
8 138, her BP was 104 over 40 -- or over 64,
9 which was -- pupils were dilated, glossy.
10 I asked her had she had been on -- drinking
11 any --

12 MR. KUHN: Your Honor, I'd object
13 to this answer, it seems to be kind of a
14 narrative response to what Mr. Barr was
15 asking. Thank you.

16 BY MR. BARR:

17 Q Did you ask her any further --

18 THE COURT: Sustained. Just
19 rephrase the question.

20 MR. BARR: I'm sorry, Your Honor.

21 THE COURT: That's okay.

22 BY MR. BARR:

23 Q Did you ask her any further questions?

24 A Yes, I did.

25 Q What did you ask her?

1 A I asked her -- I asked her if she had
2 attempted to -- the next question was,
3 attempted to leave the house. And she said
4 no -- did not reply at that time.

5 And then from there I asked her if
6 she -- if she had been drinking at all.
7 She replied no. I said, Are you on any
8 kind of meds? And she goes, Yes, I'm on my
9 Adderall for my ADHD. I said, Okay.
10 Nothing else? She says, No. I says, Have
11 you taken anything today? She goes, No. I
12 said, All right.

13 Then we proceeded to -- Officer
14 Muntean proceeded to question her on the
15 facts of Brennan and asked her why she was
16 so lethargic, and she could not answer that
17 question.

18 MR. KUHN: Your Honor, I would
19 object to this as to what Officer Muntean
20 may or may not have asked my client.

21 THE COURT: Sustained.

22 BY MR. BARR:

23 Q Were you present when Officer Muntean asked
24 her questions?

25 A Yes, sir.

1 Q And was she able to respond to those
2 questions?

3 A No, sir.

4 Q She indicated to you that the size -- that
5 the fire was about this big when she first
6 saw it (Indicating)?

7 A Yes, sir.

8 Q Based on your training, your education and
9 your experience, if someone had dumped a
10 cup of water on a fire of that size would
11 it have extinguished it?

12 A Yes, it would have smother -- smothered it.

13 Q Now, she indicated that it caught on rather
14 fast. Have you done tests on mattresses
15 and burning mattresses and things?

16 A I have looked up on National Testing,
17 they've done tests on mattresses as far as
18 a cigarette goes and stuff like that.
19 Mattresses have a rating on them that
20 they -- like a fire retardant that they're
21 supposed to basically -- it's a fire
22 retardant, basically that it will still
23 burn but it will slow burn. And like I
24 said, cigarettes placed on there it will be
25 hours before that cigarette is able to --

1 the phenomenon that a fire goes through,
2 basically the materials and glues and stuff
3 that are used to make that material, will
4 heat up the vapors and then it's the vapors
5 itself that once they get to their boiling
6 point, everything has a boiling point, like
7 a pot of water, once it gets to that point,
8 it will go ahead and ignite and get bigger
9 in size.

10 So basically with her fanning that
11 fire, it gave -- the fire triangle, it gave
12 that fire what it needed, more oxygen, so
13 it helped it in size grow faster.

14 Q A fire lit in the fashion that it's your
15 opinion that this was an incendiary fire --

16 A Yes, sir.

17 Q -- means an open flame was used to light
18 that mattress, and you observed the damage
19 to the mattress?

20 A Yes.

21 Q Do you have an opinion, sir, as to how long
22 that mattress would have been burning prior
23 to the arrival of the fire department?

24 A I estimated the mattress was probably
25 burning approximately about 10 to 12

1 minutes.

2 Q Now, did you notice any indications on
3 Kayla that she'd been in a fire or in a
4 home involved in a fire?

5 A When we were at the hospital, I did swab
6 Kayla's arms, hands, and stuff like that,
7 to see if I picked up any soot. I did take
8 tips and swabbed her nostrils. I got very
9 light soot out of her nostrils.

10 Q Did you smell anything on her person, of
11 her --

12 A I could not smell anything as far as soot
13 or smoke.

14 Q You indicated that she told you where she
15 was standing --

16 A Yes.

17 Q -- when she observed the fire?

18 A Yes.

19 Q Now, you had been in that basement and you
20 had taken photographs; is that correct?

21 A Yes, sir.

22 MR. BARR: Lori, could I have the
23 docucamera, please?

24 BY MR. BARR:

25 Q And I've put here on this screen State's

1 Exhibit 3A. Can you see that?

2 A Yes, sir.

3 Q Okay. And what area of the basement is
4 that?

5 A That right there is the -- be the east wall
6 of the basement. The first thing you see
7 there is the dryer with folded clothes on
8 top of it.

9 Q Now, did you also take a picture standing
10 from that vantage point and looking over to
11 the area of the fire?

12 A Yes, sir.

13 Q Okay. And I want to show you what's been
14 marked as State's Exhibit 3B. Do you
15 recognize that photograph?

16 A Yes, that is me standing along the east
17 wall looking west at the area where she had
18 indicated she seen Brennan with the
19 lighter.

20 Q Okay. Now, in this photograph there's a
21 mattress over here; is that correct?

22 A Yes.

23 Q That's not the mattress that caught on
24 fire?

25 A That is correct, that is not the fire --

1 the mattress that caught on fire.

2 Q The fire area would be over to this side of
3 the picture?

4 A Yeah, more to the west to north corner of
5 the basement.

6 Q And standing from that vantage point, you
7 can't see anything?

8 A No.

9 Q After you spoke to Kayla, where did you go
10 next?

11 A We left the res and went back to the fire
12 scene with Officer Muntean, and he wanted
13 to take a look at the scene and walk him
14 through what happened and stuff like that.

15 And then from there we went to the
16 neighbor's house where the kids were
17 staying, Brennan Junior, and I talked with
18 him. And when talking with him, I did not
19 observe any soot on him, any soot in his
20 nostrils. He had no burn marks on his
21 hands of any signs of being in a fire.

22 Q Okay. After speaking to Brennan, did you
23 do any more that night with regards to this
24 fire?

25 A No, we didn't.

1 Q The next day, October 4th, 2012, do you
2 continue your investigation?

3 A Yes, sir.

4 Q What do you do?

5 A I arrived at work about 8:00. About 8:15,
6 I receive a call from Miss Jennifer who
7 advised me that Miss Ayers and her
8 boyfriend had returned to the residence
9 with the kids. That night before we had
10 advised them that the house was inhabitable
11 due to the electric being damaged, the soil
12 pipe being damaged, and the amount of smoke
13 damage throughout the whole house.

14 And on my arrival -- on my way to
15 the scene, the dispatcher had called me and
16 advised me that Massillon PD was already on
17 the scene for a call.

18 Once I got there, I met -- I ran
19 into Officer Ricker, and he said everything
20 was fine here. And I said, They're not
21 allowed to be in here. We advised them the
22 night before that the house was
23 inhabitable, that they could not stay here.

24 So at that time I notified East
25 Ohio Gas Company, I went ahead and notified

1 Ohio Edison to have the utilities shut off.
2 I also notified the building department and
3 health department to have the house posted.
4 And also notified the owner of the
5 residence to show up so we could secure the
6 property.

7 Q And did you take steps to secure that
8 property?

9 A Yes, sir.

10 Q While you were there securing that
11 property, did you speak to any other people
12 involved in this case?

13 A Yes, I spoke with a Jeff Ayers, Kayla's
14 dad.

15 Q At some point in time did you then go to
16 the Massillon Police Department?

17 A Yes, sir.

18 Q And did you sit in on that interview with
19 Officer Ricker?

20 A Yes, I did.

21 Q Go back to the fire scene, you indicated
22 that Kayla had a lacerated right hand?

23 A Yes, sir.

24 Q While you were in that scene taking
25 pictures of the whole area, did you notice

1 any blood?

2 A There -- the only spot of blood that we
3 noticed in the area -- where we found the
4 broken glass, there was no blood on the
5 floor. We did notice blood splatters on
6 the hot water tank and we noticed blood
7 splatter on the washing machine. And then
8 we noticed blood -- a blood trail as
9 somebody's walking up -- back up the steps
10 on the right side of the wall. And then we
11 also noticed somebody coming back down
12 stairs, back down the steps, on the west
13 wall and on the south wall going back down
14 the steps of blood. And then we also
15 observed blood throughout the kitchen and
16 on the kitchen table.

17 Q Okay. I want to show you what's been
18 marked as State's Exhibit 3J. Do you
19 recognize that photograph?

20 A Yes, sir.

21 Q Can you tell me what's depicted in that
22 photograph?

23 A That is dry blood from the fire scene that
24 night.

25 Q And what's been marked as State's Exhibit

1 3K. Can you tell me what's depicted in
2 that photograph?

3 A That is blood located in the kitchen there
4 I do believe, yes.

5 Q State's Exhibit 3L. It might show up
6 better.

7 A That is also blood in the kitchen.

8 Q And 3M?

9 A That is also a bloody handprint.

10 Q And 3N?

11 A That is the blood splatter also in the
12 kitchen.

13 Q 3O?

14 A That is also blood splatter in the kitchen.

15 Q And was it also on the floor here?

16 A It was -- yes, it was on the floor.

17 Q I don't think it shows up in that
18 photograph because of the glare. Let me
19 try to get that glare off of there.

20 A Yes, right there on the floor right there.

21 Q You talking about down in here, in this
22 area?

23 A Yes. Yeah, right there.

24 Q Was that throughout the kitchen area?

25 A Yes.

1 Q Show you what's been marked as State's
2 Exhibit 3P.

3 A That is the back side door that goes out to
4 the north, out to the backyard. Blood
5 there on the doorknob and at the door
6 there.

7 Q And State's Exhibit 3Q?

8 A That is also the north door that enters out
9 the back door, blood.

10 Q And when you say "enters out the back
11 door," which street would that be on?

12 A That north would be -- it goes into the
13 backyard.

14 Q Into the backyard?

15 A Yes.

16 Q Show you -- I'm going to have to blow this
17 one up a little bit for you. Is that a
18 picture of 185 3rd [sic] Street Southwest
19 in Massillon?

20 A It would be 26th Street.

21 Q Or 26th Street Southwest in Massillon?

22 A Yeah. That would be on the south side of
23 the house. That's the door that -- the
24 south door that enters out on Connecticut
25 Street.

1 Q Okay. We're talking about this door right
2 here?

3 A Yes.

4 Q Then where would be the north door be?

5 A It would be -- if you go to the west side
6 of the house, it would be around the
7 corner.

8 Q Okay. Which side would be the west side
9 area?

10 A My stylus is not working. Go to -- go to
11 your left.

12 Q The left side of the picture, up in this
13 area?

14 A Yes, yes.

15 Q So that's the door that goes into the
16 kitchen?

17 A Yeah, on the back side of the house.

18 Q Okay. Do those photos fairly and
19 accurately depict the scene as you observed
20 it on October 3rd of 2012?

21 A Yes, sir.

22 Q After the conversation with Detective
23 Ricker and yourself, Kayla Ayers was
24 allowed to leave; is that correct?

25 A Yes.

1 Q Did you later obtain warrants?

2 A Yes, we went and seen the prosecuting
3 attorney at Massillon Courts and took all
4 the stuff we had and advised him --
5 explained the case to the attorney and
6 stuff like that. And he went ahead and
7 gave us -- granted us permission for the
8 warrant to go pick Miss Ayers up.

9 Q And was she picked up later that day?

10 A Yes, sir.

11 Q Since that date, have you had an
12 opportunity to listen to any recorded phone
13 calls between Kayla and other individuals?

14 A Yes, sir.

15 Q Okay. And do you -- you've spoken with
16 Kayla two times?

17 A Yes.

18 Q When you heard those phone calls, did you
19 recognize her voice?

20 A Yes, I did.

21 Q I'm going to play something right now, or
22 my co-counsel is, I want you to listen to
23 that.

24 (Thereupon, an audio recording
25 was played for the jury.)

1 BY MR. BARR:

2 Q Do you recognize that voice?

3 A Yes, that is Kayla Ayers.

4 MR. BARR: Could I have one
5 moment, Your Honor?

6 THE COURT: Yes, you may.

7 MR. BARR: Could I have that
8 docucamera back please, Ms. Flowers? Thank
9 you.

10 BY MR. BARR:

11 Q There we go. Inspector Winters, with
12 respect to photograph 3H, you see this door
13 here that I've just circled?

14 A Yes, sir.

15 Q Where does that door lead to?

16 A That door leads to the basement and it also
17 leads to the kitchen.

18 MR. BARR: Thank you. No further
19 questions.

20 THE COURT: Thank you, Attorney
21 Barr.

22 Attorney Kuhn, you may now
23 cross-examine.

24 MR. KUHN: Thank you, Judge.

25 CROSS-EXAMINATION

1 BY MR. KUHN:

2 Q How you doing today, sir?

3 A Real good.

4 Q Okay. You indicated that you went out and
5 met with Kayla the night of the fire; is
6 that correct?

7 A That's correct, sir.

8 Q Approximately what time did you meet up
9 with her?

10 A That was around 2117.

11 Q 2117? Okay. And so was that the first
12 thing you did when you got there?

13 A No. When I first got to the scene? No.
14 When I first got to the scene, I met with
15 Captain Annen, and Captain Annen had
16 advised me of the situation we had with the
17 fire and stuff like that. And he also
18 advised that Kayla had been injured
19 attempting to put the fire out. And we had
20 -- they had the medics take care of her and
21 send her to the hospital for further
22 treatment.

23 Q Okay. So you met with Captain Annen, and
24 is that when you took the photos?

25 A After I met with Captain Annen, I did my

1 normal routine where I do my clockwise walk
2 around, take photographs of the house. I
3 start with A side, B side, C side, D side.
4 And then I basically -- from there I
5 entered through the house, went into --
6 upstairs -- through the south door off of
7 Connecticut Street, went up the steps,
8 photographed the first floor, the second
9 floor, then worked my way back down to the
10 basement and observed the fire scene,
11 photographed that area and stuff like that.

12 Q Okay. And so after you do all that, then
13 you went to the hospital and met up with
14 Kayla?

15 A Yes, I advised dispatch to send me a police
16 officer which we -- once we do an
17 investigation, once I determined that this
18 is a possible arson fire, I always notify
19 the Massillon Police Officer to meet me
20 with that person who I'm talking to as a
21 further witness.

22 Q Okay. And when you met with Kayla, did you
23 smell any alcohol on her person?

24 A No, sir.

25 Q Okay. Did you smell marijuana?

1 A No, sir.

2 Q Okay. Did you smell smoke from the fire?

3 A No, sir.

4 Q Okay. And you indicated you did check her
5 arms and her hands for soot?

6 A I checked her, yeah, for soot.

7 Q And there was none present, right?

8 A There was none present.

9 Q Okay. And you checked her nostrils; is
10 that correct?

11 A Yes, and I got a light coating of soot out
12 of her nostrils.

13 Q Okay. Wouldn't that be consistent with
14 somebody who smokes cigarettes?

15 A Not the dark sooty smoke.

16 Q Well, you said it was light, though, right?

17 A Like gray -- light gray is what I picked
18 out. Somebody that smokes, you're going to
19 get a nicotine color out of her nostrils.

20 Q Okay. When -- you say you did speak with
21 the 3-year-old boy; is that correct?

22 A Yes, sir.

23 Q Okay. And did you record that conversation
24 in any way?

25 A No, sir, because Officer Muntean was

1 present at the time of questioning him, we
2 were out on the front porch.

3 Q Was Officer Muntean taping the conversation
4 in any way --

5 A No, sir.

6 Q -- with a body microphone or video camera?

7 A No, no.

8 Q Did you attempt to have the 3-year-old
9 light a lighter?

10 A Yes, we did.

11 Q Okay. Was he able to do that?

12 A He took both hands and held the lighter and
13 he was able to do it.

14 Q Okay. So he seemed to be familiar with the
15 object?

16 A Yeah.

17 Q Okay. Okay. Now, did you prepare a report
18 relating to this fire?

19 A Yes, sir.

20 Q Okay. It's a written report; is that
21 right?

22 A Yes, sir.

23 Q Okay. And is part of the report called an
24 Executive Summary?

25 A Yes.

1 Q And what is the Executive Summary?

2 A That is the process that we use for
3 scientific -- we use NFPA 921 which is a
4 guide for fire investigations. And that is
5 to help us make sure that we cover all
6 points of the fire scene and --

7 Q Okay. So is the Executive Summary, is that
8 something that you create before you do
9 your investigation or after you do it?

10 A That's after I do the investigation.

11 Q Okay.

12 A When I'm doing my report, that's after.
13 Once I've collected everything, that's when
14 I basically give my brief synopsis of what
15 I determined the fire scene to be.

16 Q Okay. And so if there was one of these
17 reports created in regards to the fires --
18 fire at Miss Ayers's house --

19 A Yes.

20 Q -- it would have been created by you; is
21 that correct?

22 A Yes, sir.

23 Q Okay. Do you recall, in your Executive
24 Summary, if you stated the fire originated
25 on the first floor of the home?

1 A Fire had started on the basement floor of
2 the home.

3 Q Okay. If I showed you the Executive
4 Summary, would that help refresh your
5 memory?

6 A Yes.

7 Q Okay.

8 MR. KUHN: Your Honor, may I
9 approach the witness?

10 THE COURT: Yes, you may.

11 MR. KUHN: Thank you.

12 MR. BARR: May I see that?

13 MR. KUHN: Sure. This has
14 previously been marked Defendant's Exhibit
15 D.

16 THE COURT: That was Defendant
17 Exhibit what, I'm sorry?

18 MR. KUHN: D, Judge.

19 BY MR. KUHN:

20 Q Sir, I'm going to hand you now what has
21 previously been marked Defendant's Exhibit
22 D. If you could check on the second line
23 the Executive Summary. Sir, does that seem
24 to indicate that the fire originated on the
25 first floor of the building?

1 A No, sir, somebody made a typo.

2 Q That's a typo? Okay.

3 Okay. And, do you know, did this
4 Executive Summary also say the materials
5 first ignited were blankets on the bed?

6 A Yes.

7 Q Okay.

8 A There was some remnants left on the bed on
9 the fire scene.

10 Q Okay. So it was a typo as to where the
11 fire originated --

12 A Yes, sir.

13 Q -- in your report?

14 A Yes.

15 Q Okay. And Ms. Ayers did deny setting this
16 fire all along; didn't she?

17 A Yes.

18 Q Okay. What year was this home built?

19 A Not right offhand I don't know, sir.

20 Q Do you think it's a newer home or an older
21 home?

22 A It's an older home.

23 Q Okay. And did you check out the wiring of
24 the home?

25 A Yes.

1 Q Okay. Do you know when it was updated, if
2 ever?

3 A The -- I had talked with the owner prior to
4 Mr. Ayers moving in, he didn't know exactly
5 what date, but the wiring had been updated.
6 He had just updated the wiring.

7 Q Okay. Did he have a professional
8 contractor do that, or did he do it
9 himself?

10 A Looking at the electrical panel, there
11 was a -- the City of Massillon, any time
12 you have electrical work done, you have to
13 have it done by a licensed contractor, and
14 Ohio Edison requires that the electrical
15 inspector come out and inspect the wiring
16 and the panel and put a stamp of approval
17 before Ohio Edison will even put the meter
18 back on.

19 Q Okay. That stamp was on there?

20 A Yes.

21 Q There was a furnace in the basement; is
22 that correct?

23 A Yes, sir.

24 Q Okay. Do you know how old that furnace
25 was?

1 A No, sir.

2 Q Okay. Same thing with the water heater?

3 A Yeah, I don't know how old that was.

4 Q And the washer and dryer were down there as
5 well?

6 A Yes, sir.

7 Q Were there any light fixtures?

8 A There was one light fixture right above the
9 post right beside the bed.

10 Q Okay. Was it intact?

11 A It was intact. There was no -- I had
12 checked the wiring for arcing or any
13 shortage out and that's when I had also
14 checked the panel for any breakers that
15 were kicked.

16 Q Okay. So was the only broken glass you
17 found from on the floor where Ms. Ayers
18 said she fell?

19 A That was the only broken glass.

20 Q There weren't any broken light bulbs or
21 anything like that?

22 A No, sir. Usually in a fire, a light bulb
23 will melt.

24 Q Okay. Were there any lights turned on down
25 there?

1 A At that time when I got there to the scene,
2 the guys had turned off the main power
3 switch which we do so we don't get guys
4 electrocuted if they're spraying any of the
5 lines, with bare wiring and stuff like
6 that.

7 Q Okay. So the only lighting you had was
8 with your flashlights?

9 A The flashlights and the electrical -- we
10 were running electrical off our fire truck.

11 Q Okay. Okay. I think -- in your report, is
12 there a part of the general report you fill
13 out that asks whether age was a factor?

14 A I would have to say I don't recollect there
15 is.

16 Q Okay. Now you did, with Officer Muntean,
17 interview Ms. Ayers the night of the fire;
18 is that correct?

19 A Yes, sir.

20 Q Okay. And she all along indicated it was
21 her belief that Brennan set the mattress on
22 fire?

23 A That is correct, sir.

24 Q Okay. Now, when you talk about the guide
25 that you use to determine these things, it

1 talks about levels of scientific certainty;
2 doesn't it?

3 A Yes.

4 Q Okay. And so if we were to put a number on
5 that, what number would it be?

6 A I really couldn't put a number with it.

7 Q Okay. And that's because it's not a
8 perfect science; is that correct?

9 A I can't even -- I can't even say -- answer
10 that question.

11 Q Okay. And so when you -- when you make up
12 your report, basically what it boils down
13 to is that this is your opinion what
14 occurred, correct?

15 A That's what we are supposed to put, our
16 opinion.

17 Q Okay.

18 A It is my solely [sic] opinion.

19 Q Okay. And so you indicated that you
20 believe the mattress probably burned for 10
21 to 12 minutes; is that correct?

22 A Yes, sir.

23 Q And how long do you think it took from the
24 neighbor's calling 911 for the fire
25 department to arrive?

1 A I estimated from Miss Ball from the church,
2 who arrived around approximately 8:00,
3 8:05, 8:06, from her time till she walked
4 around the house, knocked on the door, she
5 first arrived, she -- on the Connecticut
6 side, she noticed flames inside the window,
7 and immediately went to the doors, knocked
8 on the doors, she went on the south side of
9 the house then she walked to the north side
10 of the house. Our guys took approximately
11 7 to 8 minutes from the time of the call
12 from dispatch.

13 Q Okay. So the 10 to 12 minutes would sort
14 of be pretty close there, right?

15 A Yes, sir.

16 Q Okay. You entered the basement after the
17 fire was extinguished; is that correct?

18 A Yes, sir. Yes, sir.

19 Q So at that point had they vented the
20 basement so that there wasn't smoke in
21 there and you could see?

22 A Yes, they had -- they vented the glass
23 block window on the south side of the
24 house, which was on the Connecticut side.

25 Q Okay. And you indicated that apparently at

1 that point you tell them, hey, you can't
2 come back into this -- you can't live here
3 anymore --

4 A Right.

5 Q -- until it gets fixed up?

6 A Right. It was inhabited due to the heavy
7 smoke damage. The fire had extended into
8 the first floor bathroom, into the walls,
9 the water pipes had been broken, so -- from
10 due to the radiant heat from the fire.

11 Q Okay. So you wouldn't want people living
12 there?

13 A No.

14 Q I mean, couldn't they retrieve personal
15 belongings?

16 A We allow them to retrieve personal
17 belongings.

18 Q Okay. So you got some sort of call they
19 were back in there?

20 A Yeah.

21 Q That would seem to me like they're probably
22 getting photo albums and --

23 A That morning they were asleep -- officers
24 found them asleep upstairs and found them
25 asleep on the first floor.

1 Q Okay. And what time was that again?

2 A That was approximately -- I would say I got
3 the call around 8:15 I do believe. And
4 from driving time from the station took me
5 about 15, 20 minutes, but then the
6 dispatcher advised me PD was already on the
7 scene for another call.

8 Q Okay. So you do your investigation the
9 night of the fire?

10 A Uh-huh.

11 Q How much time do you suppose had passed
12 between Kayla being taken away to the
13 hospital and when you finally meet up with
14 her to talk?

15 A I'm saying probably 40 to 45 minutes.

16 Q Okay. When you were doing your
17 investigation, you didn't observe any gas
18 cans laying around, did you?

19 A No, sir.

20 Q Any lighter fluid containers?

21 A No, sir.

22 Q Okay. Did you observe any cigarette
23 lighters laying around?

24 A Yes, sir.

25 Q Did you observe smoke detectors in the

1 house?

2 A The smoke detectors were missing.

3 Q They were missing?

4 A They were missing.

5 Q Okay. Did you talk to the homeowner about
6 that?

7 A Yes, sir.

8 Q Okay. What did he say?

9 A They were home -- they were -- at the time
10 of rental, when he signed that lease and
11 everything, the detectors were intact.

12 Q Okay. So there were no working smoke
13 detectors --

14 A No, sir.

15 Q -- in the home? Okay.

16 I think in your report you may
17 have made reference to household solvents;
18 is that correct?

19 A Household solvents?

20 Q Yes, as possibly being the accelerant for
21 the fire? No?

22 A No.

23 Q Did you make reference to gasoline?

24 A No.

25 Q Okay. Did you make a reference to

1 ignitable liquid vapors, gasoline?

2 A No, sir.

3 Q Okay. If I -- maybe you didn't prepare
4 this. If I showed you a document entitled
5 Conclusion, and at the bottom it says,
6 Massillon Prevention Bureau, Inspector
7 Reginald Winters, would that refresh your
8 recollection?

9 A Yes.

10 MR. KUHN: Your Honor, may I
11 approach the witness?

12 THE COURT: Yes, you may.

13 BY MR. KUHN:

14 Q Thank you.

15 Sir, I'm handing you what has
16 previously been marked Defendant's Exhibit
17 A. Do you recognize this document, sir?

18 A Yes, sir.

19 Q Okay. And is that the conclusion to your
20 report?

21 A That is my report and that is a template
22 that we used that did not get taken out.

23 Q Okay. So this doesn't necessarily apply to
24 Ms. Ayers's fire?

25 A That is correct, sir.

1 Q Okay. It's just an extra document from the
2 template --

3 A Right, we can plug in -- it has a standard
4 format, you take out whatever your
5 materials that was used. That material on
6 the template doing -- also the report gets
7 proofread by the Captain of our division,
8 and we obviously missed that.

9 Q Okay. Because it does make reference to
10 the fire originating in the basement on the
11 bed, but this is something else, this
12 wasn't supposed to be in there; is that
13 right?

14 A That wasn't supposed to be there. That was
15 supposed to be there, first materials
16 ignited were materials on the bed.

17 Q Okay. So the real summary, I guess, would
18 be the Executive Summary?

19 A Yes, sir.

20 Q That's the ultimate conclusion you draw?

21 A Yes. Yes.

22 Q Okay. And you said it's your opinion the
23 ignition source for the fire was some type
24 of open flame, right?

25 A Yes, sir. That could be a lighter, that

1 could be a torch.

2 Q Okay. And that's your opinion?

3 A That is my opinion, sir.

4 MR. KUHN: Okay. I think that's
5 all I have. Thank you, sir.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you, Attorney
8 Kuhn.

9 Attorney Barr, you may redirect.

10 MR. BARR: Thank you, Your Honor.
11 May I have your exhibits please?

12 MR. KUHN: Sure.

13 REDIRECT EXAMINATION

14 BY MR. BARR:

15 Q Mr. Winters?

16 A Yes, sir.

17 Q You use computers?

18 A Yes, sir.

19 Q Are you really good at them?

20 A No, sir.

21 Q Me neither. Do those computers contain
22 your reports and these templates that
23 you've talked about?

24 A Yes.

25 Q And sometimes you punch things up and you

1 put things in and you forget to change
2 everything?

3 A Yes, sir.

4 Q But when all is said and done, do you have
5 a final original cause and origin report
6 that you keep in your file?

7 A Yes, sir.

8 Q Do you have that with you by chance?

9 A Yes, sir.

10 Q Could you pull it out? Could you flip to
11 the Executive Summary in your final -- and
12 this is the final original report, correct?

13 A Yes.

14 Q Maintained by your office in the Fire
15 Prevention Bureau --

16 A Yes.

17 Q -- as a record and normal course of
18 business, and you keep this and preserve
19 this forever, correct?

20 A That is correct, sir.

21 Q Could you read to me the Executive Summary
22 contained in your final original report
23 after all the typos --

24 MR. KUHN: Judge, I'm going to
25 object to this. Is this a document I've

1 received?

2 MR. BARR: Yes, it is, Mr. Kuhn.

3 THE COURT: Could you approach
4 please?

5 MR. KUHN: Sure.

6 - - - - -

7 (A conference was held at the
8 bench outside the hearing of the
9 jury.)

10 - - - - -

11 MR. BARR: Provided in discovery,
12 Your Honor, the origin and cause report,
13 and I'm asking him to read this based upon
14 the cross-examination of documents that I
15 believe he received from Massillon
16 Municipal Court that were not the final
17 report and contain typographical errors. I
18 believe the jury needs to know this.

19 THE COURT: Okay. Do you want to
20 take a look at this?

21 MR. KUHN: Yeah, if I could.

22 MR. BARR: There is the discovery
23 number 15, 2012, it indicates origin and
24 cause from Massillon Fire Department. The
25 document he has, we don't have in our file.

1 This is the only document we could have
2 given him.

3 THE COURT: Do you want to check
4 your file?

5 MR. KUHN: Yeah, I'll do that real
6 quick.

7 THE COURT: Okay.

8 (End of conference at the bench.)

9 - - - - -

10 THE COURT: Ladies and gentlemen,
11 this is one of those times where I'm going
12 to ask you to be patient while we need to
13 address some issues. If you feel the need
14 to stand up and stretch for a little bit,
15 go ahead and feel free do so, okay?

16 MR. KUHN: If we signed for them,
17 we signed for them.

18 THE COURT: If you could approach
19 for just a minute.

20 MR. BARR: Mr. Kuhn.

21 - - - - -

22 (A conference was held at the
23 bench outside the hearing of the
24 jury.)

25 - - - - -

1 THE COURT: Put on the record with
2 respect to the document with which Mr.
3 Winters is being currently examined
4 regarding it appears as though the Defense
5 did sign for the report, and, therefore,
6 you are permitted to cross-examine him.

7 MR. BARR: Thank you.

8 THE COURT: Or direct.

9 MR. BARR: Thank you.

10 (End of conference at the bench.)

11 - - - - -

12 BY MR. BARR:

13 Q Mr. Winters, if you would, I believe I
14 asked you to read your final original copy
15 of your Executive Summary to this jury,
16 would you do that?

17 A Yes. After examination of the fire scene
18 it was determined the fire originated in
19 the basement on the bed. After examination
20 of the fire scene, interviewing witnesses,
21 interviewing the insured and using the
22 levels of scientific certainty as discussed
23 in the 2011 edition of NFPA 921; A Guide
24 for Fire and Explosion Investigation, it is
25 my opinion the ignition source for the fire

1 was some type of open flame. The materials
2 first ignited were blankets on the bed.
3 The act or omission that brought the
4 ignition source and the materials first
5 ignited together was the deliberate act of
6 a person or persons. Using these elements
7 of a fire cause, the cause of the fire is
8 incendiary.

9 Q And that is in the original final report?

10 | A Yes, sir.

11 Q And the exhibits, Defendant's Exhibit A and
12 Defendant's Exhibit D, that Mr. Kuhn showed
13 you are not contained in that report?

14 A That is correct, sir.

15 Q Thank you, Mr. Kuhn.

16 Mr. Kuhn asked you about your
17 opinion, and that opinion's based on your
18 training and education that you've
19 received?

20 | A Yes, sir.

21 Q It's based on the years, the five years,
22 and 30-some fires that you've investigated?

23 | A Yes, sir.

24 Q And it's also based on the physical
25 evidence that you saw at the fire scene?

1 A That is correct, sir.

2 Q Now, you have previous -- previously told
3 this jury that you believe there were two
4 points of origin; is that correct?

5 A That is correct, sir.

6 Q And when this docucam catches up with me, I
7 want you to look at that photograph. This
8 is State's Exhibit 3C. Which point of
9 origin is that?

10 A That is -- would be the east side of the
11 bed on the north side of the mattress
12 spring.

13 Q Okay. Showing you what's been marked as
14 State's Exhibit 3E. And with respect
15 to -- where is the second point of origin
16 in that photograph?

17 A On the post, wood post, what we call
18 consider -- what we call a V-pattern on the
19 south side. That would be the south side
20 of the bed.

21 Q Based upon the evidence that you observed
22 there, sir, do you have an opinion as to
23 which of those points of origin started
24 first?

25 A Yes, sir.

1 Q Which one?

2 A The one on the post was started first. The
3 one at the second -- the one on the south
4 side, north side of the bed, was started
5 second.

6 Q Okay. Now this is a door; is that correct?

7 A Yes, sir.

8 Q And that door was there?

9 A That door was there.

10 Q Okay. Now, how big was Brennan?

11 A I'd say about that tall (Indicating).

12 Q Would he be able, in your opinion, to lift
13 his leg up over that door?

14 A No, sir.

15 Q So he would have had to crawl over that
16 bed --

17 A Yes.

18 Q -- start that fire on that side --

19 A Yes.

20 Q -- then crawl over while it's burning --

21 MR. KUHN: Your Honor, I object to
22 this as being beyond the scope of my
23 cross-examination.

24 MR. BARR: I believe it's within
25 the scope, Your Honor.

1 THE COURT: May you approach
2 please?

3 - - - - -

4 (A conference was held at the
5 bench outside the hearing of the
6 jury.)

7 - - - - -

8 THE COURT: Mr. Barr?

9 MR. BARR: Well, Your Honor, Mr.
10 Kuhn asked him several questions about
11 Brennan starting the fire, and I think I'm
12 allowed to clear up that. In the State's
13 opinion, it's physically impossible for
14 Brennan to have started this fire.

15 THE COURT: Mr. Kuhn?

16 MR. KUHN: Judge, I asked if the
17 little boy knew how to work a lighter.

18 THE COURT: I'll allow it.

19 MR. BARR: Thank you.

20 (End of conference at the bench.)

21 - - - - -

22 BY MR. BARR:

23 Q Back to my question. The original point of
24 origin right here?

25 A Yes, sir.

1 Q Then someone would have to crawl across the
2 bed and start another fire over here --

3 A Correct.

4 Q -- while this one was lit?

5 A Correct.

6 Q You said you spoke to Brennan?

7 A Yes, sir.

8 Q As a result of speaking to Brennan, did you
9 continue your investigation into who
10 started this fire?

11 A Yes, sir.

12 MR. BARR: Thank you. No further
13 questions.

14 THE COURT: Attorney Kuhn,
15 anything further?

16 MR. KUHN: No, thank you, Judge.

17 THE COURT: Okay. Anybody wish to
18 reserve the right to recall this witness?

19 MR. BARR: No, Your Honor.

20 MR. KUHN: No, thank you, Judge.

21 THE COURT: Thank you, Inspector
22 Winters, you are excused.

23 THE WITNESS: Thank you.

24 THE COURT: The State can call its
25 next witness.

1 MS. SCHNELLINGER: Thank you, Your
2 Honor. The State would call Jeff Ayers.

3 JEFF AYERS

4 who, after being first duly sworn,
5 testified as follows:

6 THE COURT: You may inquire.

7 MS. SCHNELLINGER: Thank you, Your
8 Honor.

9 DIRECT EXAMINATION

10 BY MS. SCHNELLINGER:

11 Q Will you please state your name for the
12 record?

13 A Jeff Ayers.

14 Q Sir, do you know an individual by the name
15 of Kayla Ayers?

16 A Yes.

17 Q How do you know her?

18 A She's my daughter.

19 Q Do you see her in the courtroom?

20 A Yes.

21 Q Can you point her out and describe her for
22 the Court and jury?

23 A I'm sorry?

24 Q Can you point her out and describe her for
25 the Court and jury?

1 A Yes, that's my daughter over there in the
2 black shirt (Indicating).

3 MS. SCHNELLINGER: Your Honor, may
4 the record so reflect?

5 THE COURT: The record will
6 reflect the identification.

7 BY MS. SCHNELLINGER:

8 Q Now, where were you living in the very
9 beginning of October of 2012?

10 A 185 26th Street Southeast, Massillon.

11 Q And who lived there with you?

12 A My girlfriend Tonya, our two girls, and
13 Kayla, Brennan, that's her boyfriend, her
14 three children, and -- yeah, that's it.

15 Q Now, how long had you lived there?

16 A I moved in there January 3rd, last year,
17 which was 2012.

18 Q Now did all of you move in at that time?

19 A No, just me and Tonya and the girls.

20 Q And when did Kayla's family join you?

21 A I believe in May.

22 Q And what was the situation, were you
23 renting this or did you --

24 A Yes, I was renting it.

25 Q While you were living in Massillon, what --

1 describe the relationship between you and
2 the Defendant.

3 A Between me and Kayla?

4 Q Yes.

5 A Pretty good.

6 Q At some point did it deteriorate at all?

7 A Yes, it did start to deteriorate.

8 Q And at some point did you think -- did you
9 reconsider the living arrangement?

10 A Yes.

11 Q Why?

12 A Well, because I felt like she was a grown
13 woman with her own family and she needed to
14 take care of them on her own, that I
15 couldn't take care of her and her family
16 for the rest of her life. She needed to
17 step up and get her own home.

18 Q Did you tell the Defendant this?

19 A Yes.

20 Q What were her reactions?

21 A At first she would say that she had a
22 place, she had been talking to different
23 housing authorities and stuff, and that she
24 had a place to go, and just none of it ever
25 happened.

1 Q Did you continue to try to talk to her
2 about the situation?

3 A Yes, I did.

4 Q Did she ever give you a different reaction?

5 A Yes, the more assertive I got, the worst
6 she got.

7 Q You mean the more assertive about her
8 moving out?

9 A Yes.

10 Q And what do you mean the worst she got?

11 A Um-m, increasingly she would lie and say
12 that she had a place and she was going here
13 and she was going there. And, um-m, the
14 more assertive I would get, the more
15 aggressive she would get to the point she
16 would tell me she wasn't leaving at all,
17 that she was going to live there and she
18 was going to kick me out of there. And --

19 Q At some point did you decide to leave?

20 A Yes, I did.

21 Q And why did you decide to leave?

22 A Because I -- I couldn't get her to step up
23 and do anything on her own. And she
24 started making threats and I didn't feel
25 safe there anymore and I figured the only

1 thing I could do was if she wasn't going to
2 leave, I was going to leave.

3 Q What were those threats?

4 A Just give me a second.

5 Q Take your time.

6 A She told me that she wasn't going to leave
7 and before she would leave she would burn
8 the mother fucker down, in that -- in those
9 words. And it started getting scary to me.
10 I mean, my girlfriend's pregnant, we have
11 little kids in the house. And so prior to
12 the fire that actually did happen, possibly
13 up to a week, I don't know, I called my
14 sister and my aunt and the landlord and I
15 told them the threats she was making and it
16 was starting to scare me, I didn't know
17 what to do.

18 And I finally come to the
19 decision, I said, well, if she's not going
20 to leave, then I'm going to leave, I got to
21 get out of here. I know she didn't have a
22 car so I figured if I get, you know, 50 or
23 a hundred miles away, she's not going to
24 follow me. Maybe then she would step up
25 and realize, you know, she had to do

1 something to take care of her family. And,
2 you know, there's a million organizations
3 out there for a single woman with children.
4 There's a million of them. I mean, all you
5 have to do is reach out and ask and they'll
6 put you in a place to live and take care of
7 you. And that's -- that's what my hope
8 was.

9 Q And what did you do?

10 A I went down to West Virginia to where I
11 have some friends that I've worked for over
12 the years because they have several
13 apartments down there. So I went down
14 there because -- well, to be frank with
15 you, I knew I wouldn't have to have a
16 deposit and all the upfront money that it
17 takes to move into a place these days. So
18 I figured I'd go down there because I would
19 have work down there to do and it would be
20 far enough away to where, you know,
21 everybody else would have to step up and do
22 their own thing.

23 Q When -- what day did you go down there?

24 A Um-m, I believe it was October 3rd.

25 Q And was that the day of the fire?

1 A That was the day of the fire, yes.

2 Q Do you recall when you left?

3 A Yes, I left about 4:30 that day. And the
4 only reason I remember that is because I
5 would see how long it actually takes you to
6 get there and how many miles it is and that
7 kind of thing. Normally I would not have
8 remembered something like that, but I do
9 actually remember what time I left that
10 time.

11 Q Okay. And did you tell your daughter you
12 were going?

13 A Yes.

14 Q How did you find out about the fire?

15 A Jennifer called me.

16 Q And who is Jennifer?

17 A That's my next door neighbor.

18 Q And where were you when you found out?

19 A I was on my way back from West Virginia.
20 At what point, I really don't recall. I'm
21 going to say somewhere in the Uhrichsville
22 area, maybe Tappan Lake. I'm really not
23 clear exactly where I was at.

24 Q When you got that phone call and heard the
25 news, what did you do?

1 A I think I went into shock a little bit. I
2 just continued on my way home and I just --
3 I didn't know what to do. I just -- I
4 guess I just had to see it to believe it.
5 I don't really know. I just continued on
6 my way back.

7 Q Did you eventually talk to the police about
8 your daughter's threats to you?

9 A Yes.

10 Q And you gave them a statement?

11 A Yes.

12 MS. SCHNELLINGER: May I have a
13 moment, Your Honor?

14 THE COURT: Yeah, you may.

15 MS. SCHNELLINGER: Your Honor, I
16 have nothing further. Thank you.

17 THE COURT: Thank you.

18 Attorney Kuhn, you may inquire.

19 MR. KUHN: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MR. KUHN:

22 Q Good afternoon, sir, how are -- or good
23 morning rather.

24 A I've been better, but thank you for asking.

25 Q Okay. Where do you live right now, sir?

1 A I live in Uhrichsville.

2 Q Okay. How far away is that?

3 A About 50 miles, 50 miles or so, yeah.

4 Q But the date of the fire, you were going
5 down to West Virginia?

6 A Yes.

7 Q Okay. Did you just decide against moving
8 down there?

9 A Well, I didn't want to live in West
10 Virginia to start with, I wanted to live in
11 Ohio. But, like I said before, there was
12 people I knew down there that I have worked
13 for previously, I knew they had apartments.
14 So that was my best option at the moment,
15 yes.

16 Q Okay. When you were living up here in
17 Massillon, what were you doing for a
18 living?

19 A Odd jobs.

20 Q Okay.

21 A I had worked for Nickles Bakery at one
22 point and I couldn't continue that because
23 of the different scheduling and everything
24 else, it was just too much.

25 Q Was Kayla's boyfriend helping out with the

1 bills at all?

2 A A little bit, yeah. He contributed some
3 money to help, yes.

4 Q Okay. Was Kayla in charge of keeping the
5 house clean?

6 A No.

7 Q Did she prepare meals for you?

8 A Well, no, not really. We all did, but
9 not -- she didn't particularly -- she
10 wasn't our caretaker or nothing like that.

11 Q Okay. So you were on the road when you got
12 the call saying that there had been a fire?

13 A Yes.

14 Q Did Kayla ever indicate to you an intent to
15 keep the home after you left?

16 A Yeah, she did, but I knew that -- there was
17 no way that was going to happen.

18 Q Okay. Did you -- did you have some sort of
19 renter's insurance on the place?

20 A None.

21 Q Do you know if Kayla did?

22 A No.

23 Q Do you know if the house had working smoke
24 detectors in it?

25 A No, it did not.

1 Q And why didn't it?

2 A I don't know.

3 Q Were they there --

4 A Well, because I mean -- with me, I cook a
5 lot and, as silly as it might sound,
6 they're annoying to me, very annoying,
7 because as soon as you get something -- you
8 burn toast in the house and it goes off,
9 and you end up taking the battery out of
10 them. And I just -- for my whole life I
11 haven't had smoke detectors because of
12 that. They're annoying.

13 Q So you purposely disconnected them?

14 A No, there wasn't any to start with.

15 Q Okay. So when you moved in, there were
16 none?

17 A None.

18 Q Okay. And you indicated you have a child
19 on the way; is that correct?

20 A Yes, that's correct.

21 Q How many -- you have your girlfriend, a
22 child on the way, how many other kids do
23 you have?

24 A Two that live with us.

25 Q So just Kayla and two more and one on the

1 way?

2 A I'm sorry, say that again.

3 Q So you have Kayla --

4 A I have my daughter Kayla, I have my son
5 Jeffrey, I have -- my brother's two kids is
6 who they are. Tonya is actually my
7 sister-in-law, she was. My brother passed
8 away a little over a year ago and I took
9 them on, and it is what it is.

10 Q Now you two are having a child together?

11 A Now -- now we're actually together, yes.

12 Q Okay. You and Kayla argue a lot while she
13 lived with you?

14 A Sometimes, yes.

15 Q Okay. Would you guys argue about money?

16 A Yeah. Among other things, yeah.

17 Q Okay. Do you think you have a substance
18 abuse issue, a problem?

19 A I'm an alcoholic, yes.

20 Q Okay. Did you ever express that to any of
21 the neighbors or anything?

22 A Yeah, I believe so.

23 Q Okay. Did you ever demand that Kayla bring
24 you alcohol?

25 A No.

1 Q Okay. Was the money that her boyfriend
2 provided ever used to purchase alcohol for
3 you?

4 A Well, that's possible I guess, but you got
5 to figure, you know, we're paying all the
6 bills in the house so whatever money he's
7 giving me is basically about a teardrop in
8 a bucket compared to what it costs.

9 Q Okay.

10 A So what I actually did with the money that
11 was coming in wasn't even mad money, wasn't
12 even play money, it was very little, to say
13 the least.

14 Q Okay.

15 A You know, he -- in other words, he comes
16 home and hands me 25 to \$40.00 a week, and
17 I'm paying 1,200 a month in this house for
18 the bills and utilities, not to mention
19 food. Kind of like handing you a \$5 bill
20 and saying, here, drive to Canada. So what
21 you do with that \$5 bill is pretty much up
22 to you.

23 Q So you said you sort of became increasingly
24 more assertive?

25 A Yes.

1 Q Okay. Could you, I guess, interpret that
2 as being mean?

3 A No, you could interpret that as being tough
4 love and assertive because my daughter has
5 three children and she needs to support
6 them.

7 Q Okay. Do you know if she was enrolled in
8 some programs here in Stark County?

9 A None.

10 Q Do you know if her children were in a
11 daycare program?

12 A Yes, they were.

13 Q And that was through I think the Department
14 of Job and Family Services?

15 A Yes, yes.

16 Q And that was to get her freed up so she
17 could work; is that correct?

18 A Yes.

19 Q So she was enrolled in a program then,
20 right?

21 A Well, yeah. Yeah, in that, yes, but I
22 thought you were talking about another type
23 of program.

24 Q Okay.

25 MR. KUHN: I think that's all I

1 have. Thank you.

2 THE COURT: Thank you, Attorney
3 Kuhn.

4 Attorney Schnellinger?

5 MS. SCHNELLINGER: We have nothing
6 further, thank you.

7 THE COURT: Anybody wish to
8 reserve the right to recall this witness?

9 MR. KUHN: No, thank you, Judge.

10 THE COURT: State?

11 MR. BARR: Thank you, Your Honor.

12 THE COURT: Sir, you can step down
13 and you are excused.

14 THE WITNESS: Thank you.

15 MR. BARR: State would call
16 Brennan Scott, Your Honor.

17 THE COURT: Okay.

18 THE BAILIFF: Please raise your
19 right hand.

20 BRENNAN SCOTT

21 who, after being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BARR:

25 Q Good morning, sir.

1 A Good morning.

2 Q If you would, would you state your name and
3 spell your first name for this lady right
4 here please?

5 A Spell my first name?

6 Q Yeah.

7 A My name's Brennan, B-R-E-N-N-A-N, Scott.

8 Q Scott spelled the typical way, S-C-O-T-T?

9 A Yes, sir.

10 Q Okay. Brennan, where do you live right
11 now?

12 A 10026 Johnsford Road.

13 Q And what city's that in?

14 A Beach City.

15 Q Beach City? Who do you live with?

16 A Brittany Smeyres.

17 Q How long you been living there?

18 A Well, I stay with Matt and Teoni Gamble.

19 Been there almost a week now.

20 Q Okay. Where did you grow up?

21 A Leesville, South Carolina.

22 Q And when you lived -- how long did you live
23 in South Carolina?

24 A All my life until about a year ago.

25 Q Until about a year ago? When you lived in

1 South Carolina, did you meet a girl by the
2 name of Kayla Ayers?

3 A Yes, sir.

4 Q How did you meet her?

5 A She was -- her and her dad lived beside my
6 friend, and we started talking.

7 Q Do you recall how old you are when you --
8 you were when you started that?

9 A Seventeen.

10 Q Did you guys become boyfriend and
11 girlfriend?

12 A Yes, sir.

13 Q Did you have children?

14 A Yes, sir.

15 Q How many children?

16 A Three.

17 Q What are their names?

18 A Layla, Nevaeh, and Brennan.

19 Q And do you refer to Brennan -- it's Brennan
20 Junior, right?

21 A Yes, sir.

22 Q Do you refer to him as some other name?

23 A Bubba.

24 Q Bubba? So nobody calls him Brennan?

25 A No, most of them call him Bubba.

1 Q Okay. How old are your daughters?

2 A Five, four. My son's three.

3 Q Did there come a time you and Kayla moved
4 to Ohio?

5 A Yes, sir, we did.

6 Q Do you recall approximately when that was?

7 A It was like -- it was last year, like a
8 week or two before Christmas.

9 Q And when you moved to Ohio, who did you
10 stay with?

11 A We moved into Cadiz. It was Jeff's
12 brother's old house.

13 Q Okay. And who was living there then?

14 A Me, Kayla, and the kids.

15 Q Was anybody else living with you?

16 A Kathy Wills, her brother's mom.

17 Q How long did you stay in Cadiz?

18 A Four months almost.

19 Q And then where did you move to?

20 A Her dad's.

21 Q Her dad's? And her dad is Jeff?

22 A Jeff Ayers.

23 Q And do you know what city that was in?

24 A Massillon.

25 Q Okay. Can you see that picture on that

1 screen before you?

2 A Yes, sir.

3 Q Is that -- that's State's Exhibit 3H. Does
4 that house look familiar?

5 A That's the house we moved to from Cadiz to
6 there.

7 Q And so you moved into that house and who
8 all lived there?

9 A Her dad, Tonya, their two kids, me, Kayla,
10 and our three kids.

11 Q When you got to Massillon, did you work?

12 A Yes, sir.

13 Q Was it steady work?

14 A For the most part, yes, sir.

15 Q Where did you work when you first got here?

16 A I did auto detail and mechanic and body
17 work for a car lot.

18 Q In October of 2012, were you still living
19 in that house that's depicted in that
20 picture?

21 A Yes, sir.

22 Q So that was the place you came home to
23 every night?

24 A Yes, sir.

25 Q Woke up there every morning?

1 A Yes, sir.

2 Q In October of 2012, where were you working?

3 A Newman Roofing.

4 Q Where did your boss live?

5 A 10026 Johnsford Road.

6 Q How -- so in October of 2012, how would
7 your boss get to work?

8 A I was picking him up.

9 Q So you were driving him to work?

10 A Yes, sir.

11 Q I want to take your attention back to
12 October 3rd, 2012. Did you go to work that
13 day?

14 A Yes, sir.

15 Q And did you take your boss to work that
16 day?

17 A Yes, sir.

18 Q Do you recall what time you all might have
19 left?

20 A What, in the morning?

21 Q Yeah.

22 A Probably 8:00.

23 Q Do you recall where you worked that day?

24 A We was in -- heading towards Wooster.

25 Q When -- when your boss would work -- did he

1 have a wife or girlfriend that lived with
2 him?

3 A Yes, sir.

4 Q Did they have kids?

5 A Yes, sir, two.

6 Q Did his wife or girlfriend work?

7 A Yes, sir.

8 Q Where would his kids stay when you and the
9 boss worked and his girlfriend worked?

10 A School.

11 Q School? Where would they go after school?

12 A We -- we picked them up.

13 Q Where did you take them?

14 A The day of this incident he took them over
15 to this house on the picture, and Kayla
16 watched her while we had to run to Akron to
17 do another job.

18 Q Okay. So you went to work with your boss?

19 A Yes, sir.

20 Q His kids went to school?

21 A Yes, sir.

22 Q Then you all picked them up from school?

23 A Yes, sir.

24 Q And took them to 185 26th Street Southwest?

25 A Yes, sir.

1 Q And left them with Kayla?

2 A Yes, sir.

3 Q Then you guys go and finish another job?

4 A Yes, sir.

5 Q After you finished that job, did you have
6 to pick up any more kids?

7 A Yes, sir.

8 Q Who did you have to pick up?

9 A Well, I come back -- I took Kayla to go
10 pick up my kids from day care, it was a
11 little bit before 6:30 I think, and then
12 came back and me and him took him home.

13 Q So you went and picked your children up at
14 day care?

15 A Yes, sir.

16 Q Why did they have to be home before 6:30?

17 A Because they went to church.

18 Q And how would they get to church?

19 A The church bus.

20 Q The church bus would pick them up?

21 A Yes, sir.

22 Q Did you have them home there in time for
23 that church bus?

24 A Yes, sir.

25 Q After the church bus picked them up, where

1 did you go?

2 A I left before the church bus came.

3 Q Okay. And where did you go?

4 A Back to my boss's house.

5 Q And what did you do there?

6 A Hung out with my boss, played
7 PlayStation -- Xbox with his son and him.

8 Q How long did you stay there?

9 A It must have been two hours, two and a
10 half.

11 Q Where did you go when you were done playing
12 Xbox with the boss's son?

13 A I came home.

14 Q And what did you see when you came home?

15 A The whole corner lot was full of fire
16 department.

17 Q So what did you do?

18 A I went and checked over there, and Kayla
19 was getting in the ambulance. The
20 ambulance was leaving and when the
21 ambulance left, I went and checked on my
22 kids.

23 Q Were your kids okay?

24 A Yes, sir.

25 Q Where were they at?

1 A At the neighbor's, Jennifer's.

2 Q Jennifer's house?

3 A Yes, sir.

4 Q Did you start this fire?

5 A No, sir.

6 MR. BARR: No further questions,
7 Your Honor.

8 THE COURT: Thank you.

9 Attorney Kuhn?

10 MR. KUHN: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. KUHN:

13 Q Good morning, sir, how are you today?

14 A How are you?

15 Q You indicated you have children with Kayla;
16 is that correct?

17 A Yes, sir.

18 Q You said you have three children?

19 A Three kids.

20 Q Have you two ever been married?

21 A No, sir.

22 Q Are you currently in a romantic
23 relationship?

24 A I'm in a relationship.

25 Q I'm sorry?

1 A I'm in a relationship.

2 Q With Kayla?

3 A No.

4 Q Okay. With somebody else?

5 A Yes, sir.

6 Q Okay. And you say you live in Massillon
7 nowadays; is that correct?

8 A Navarre, Beach City.

9 Q At the time of the fire were you living in
10 that house with Kayla and the kids --

11 A Yes, sir.

12 Q -- and everybody?

13 A Yes, sir, I was.

14 Q So at that time you were in a romantic
15 relationship with Kayla?

16 A With Kayla, yes.

17 Q Okay. Did you get to observe Kayla and her
18 father interact regularly?

19 A Yes, sir.

20 Q Okay. Did they argue a lot?

21 A Yes, sir.

22 Q Okay. Would you say they had a good
23 relationship?

24 A It was -- it was good, but rocky.

25 Q Was Jeff ever mean to Kayla?

1 A It was kind of a little of both.

2 Q Okay. Was he ever mean to you?

3 A Not really.

4 Q Okay. Did he say you weren't contributing
5 enough to the house?

6 A No, sir. He never really told me stuff
7 like that.

8 Q Would he say that about Kayla?

9 A He said -- he complained to her about what
10 was going on.

11 Q Okay. Did you contribute financially to
12 the house?

13 A Yes, sir.

14 Q How much would you say you chipped in?

15 A Maybe 2, 250, maybe 300 a month.

16 Q Okay. You indicated when this fire
17 occurred you were at your boss's home?

18 A Yes, sir.

19 Q How far away from that -- from your house
20 is he?

21 A About 20, 25 minutes depending on traffic.

22 Q Where does he live?

23 A Beach City.

24 Q So you had to go from Beach City up to
25 Massillon?

1 A Yes, sir.

2 Q Okay. Is there a child support order
3 currently for the children you have with
4 Kayla?

5 A No, sir.

6 MR. BARR: Objection.

7 THE COURT: Sustained.

8 BY MR. KUHN:

9 Q Do you know where Jeff was when the fire
10 occurred?

11 A He was, I think, on his way back from West
12 Virginia.

13 Q Okay.

14 MR. KUHN: I think that's all I
15 have, thank you.

16 THE COURT: Thank you, Attorney
17 Kuhn.

18 MR. BARR: No further questions,
19 Your Honor.

20 THE COURT: Anybody wish to
21 reserve the right to recall this witness?

22 MR. BARR: No, Your Honor.

23 MR. KUHN: No, thank you, Judge.

24 THE COURT: Thank you, sir, you
25 can step down, you are excused.

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: Thank you.

3 State want to call its next

4 witness.

5 MS. SCHNELLINGER: Your Honor, the
6 State would call Jason Pandrea.

7 THE BAILIFF: Please raise your
8 right hand.

9 JASON PANDREA

10 who, after being first duly sworn,
11 testified as follows:

12 THE COURT: You may inquire.

13 MS. SCHNELLINGER: Thank you, Your
14 Honor.

15 DIRECT EXAMINATION

16 BY MS. SCHNELLINGER:

17 Q Can you please state your name and spell
18 your last name for the record?

19 A Jason Pandrea, P-A-N-D-R-E-A.

20 Q Jason, where do you live?

21 A 214 Gnau Avenue.

22 Q And what city is that in?

23 A Perry, Massillon.

24 Q And where are you from?

25 A I'm from Massillon.

1 Q You're from Massillon? Did you live there
2 your whole life?

3 A Yes.

4 Q And were you living at that residence in
5 October of last year?

6 A Yes.

7 Q And who lives there with you?

8 A My mom, my dad, my wife and children.

9 Q How many children do you have that stay
10 with you?

11 A I have three.

12 Q What are their ages?

13 A Ten, nine, and two.

14 Q How close is the residence that you
15 currently live in to 185 26th Street
16 Southeast in Massillon?

17 A About a half a mile.

18 Q Now, the family that was living there in
19 October of last year, the Ayers family, did
20 you know them?

21 A Yes, I do.

22 Q How did you know them?

23 A I met them through a friend of theirs,
24 Daniel.

25 Q Do you recall when you met them?

1 A It was approximately three, four months
2 ago.

3 Q Three or four months ago from now?

4 A Yeah.

5 Q Are you currently working right now?

6 A I do landscaping.

7 Q And you actually have a conviction for
8 pandering, a felony of the second degree;
9 and corruption of another with drugs, a
10 felony of the fourth degree; is that
11 correct?

12 A I do.

13 Q And that was back in 2003; is that right?

14 A Yes.

15 Q And you finished probation in 2006?

16 A Yes.

17 Q Now you stated you knew the Ayers family;
18 is that correct?

19 A Yes.

20 Q Did you know all of them?

21 A Not -- I knew the dad, the stepmom, and
22 Kayla and Brennan.

23 Q So not so much the kids?

24 A I knew the kids also, yes.

25 Q Okay. What was your relationship with

1 Jeff?

2 A A friend.

3 Q Okay. How close were you?

4 A We -- we're pretty close.

5 Q Okay. What about Kayla, the Defendant?

6 A Kayla and I had a good relationship.

7 Q And what kind of relationship is that?

8 A More of a friend relationship.

9 Q Did that friendship ever go into something
10 else?

11 A Yes, it did.

12 Q And what was that something else?

13 A Sexual relationship.

14 Q Do you recall when that started?

15 A About two and a half months after I knew
16 the family.

17 Q Is that relationship still going on?

18 A No.

19 Q How did it end?

20 A Um-m, I had talked to one of my friends and
21 he had said that she was getting attached
22 and -- or she had said that I was getting
23 attached, to one of my friends, and I told
24 my friend that I wasn't attached. And at
25 that point I ended the relationship.

1 Q Were you married at the time?

2 A Yes, I was.

3 Q Is your wife aware of your affair?

4 A No, she's not.

5 Q Even to this date is she aware of your
6 affair?

7 A No.

8 Q There seems to be a little confusion about
9 the time because you said you met them
10 three or four months ago.

11 A Uh-huh.

12 Q Three or four months ago would be October
13 of 2012. Does that sound right, or was it
14 before that?

15 A It was approximately three and a half, four
16 months, somewhere around there, yeah.

17 Q Okay. So were you -- when do you think the
18 relationship ended? Do you know the month?

19 A I'm not positive.

20 Q Okay. Were you made aware at some point
21 that there was a fire at the Ayers
22 residence?

23 A Yes, I was.

24 Q And at the time of the fire, was your
25 relationship still going on?

1 A No.

2 Q Were you still friendly with the Ayers
3 family?

4 A Yes, I was.

5 Q Did you still go to the house?

6 A Yes.

7 Q And who did you see when you went to the
8 house?

9 A Jeff and Brennan.

10 Q How did you find out about the fire at the
11 house?

12 A The day after my friend Brandon had told
13 me.

14 Q So you found out the day after the fire?

15 A Right.

16 Q How often do you think you were at the
17 house with the family?

18 A I'd go over about every weekend. Yeah.

19 Q And did you have occasion to be around the
20 Defendant and her father?

21 A Yes.

22 Q And did you ever -- what would -- how would
23 you describe their relationship?

24 A It was -- it was good. I mean, I didn't
25 see no problem with it.

1 Q Did you ever see any arguments between
2 them?

3 A Yeah. One night I did, yes.

4 Q Was that right before the fire?

5 A Um-m, it was approximately a week or so
6 before the fire. I had talked to him the
7 night before the fire, though, and there
8 was no indication of anything going on at
9 the time.

10 Q What about the fight that you overheard,
11 can you tell us about that?

12 A Um-m, I was talking to her dad about the
13 boat and how much it would be to get it
14 back running. And her dad was upset
15 because it was going to take so much, and
16 talking about he -- they're in financial
17 situations at the time, and how -- how
18 Brennan and them aren't paying rent and how
19 basically they was having a hard time with
20 the -- financially. And that pretty much
21 Kayla come up and basically said that if
22 Jeff ever left her again, she would burn
23 the house down.

24 Q So you heard Kayla say this?

25 A Yes.

1 Q And do you see the person that said this in
2 the courtroom?

3 A Yes, I do.

4 Q Could you identify her for the Court and
5 the jury?

6 A Kayla Ayers.

7 Q Can you describe what she's wearing?

8 A She's wearing black and Bob Barker sandals
9 and white jeans -- or, I'm sorry, blue
10 jeans.

11 Q Thank you.

12 MS. SCHNELLINGER: Your Honor,
13 will the record reflect he's identified the
14 Defendant?

15 THE COURT: Yes, so reflected.

16 BY MS. SCHNELLINGER:

17 Q When you heard the Defendant say those
18 words to her father, can you describe her
19 emotions?

20 A Um-m, it was like she meant it, but she
21 didn't.

22 Q Was she laughing?

23 A It was more -- yeah, it was more kind of a
24 laugh or a joke kind of thing.

25 Q Okay. But she meant it?

2 MS. SCHNELLINGER: Thank you, Your
3 Honor, I have nothing further.

5 Attorney Kuhn?

6 MR. KUHN: Thank you, Judge.

7	CROSS-EXAMINATION
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9 Q Good morning, sir, how are you today?

11 Q Good. You indicated that you are a felon,
12 is that correct, sir?

14 Q Okay. And I think the Prosecutor asked if
15 you were convicted of something called
16 pandering; is that right?

18 Q That's not really the name of the offense,
19 is it?

20 A Yeah, it was pandering --

21 MR. BARR: Objection.

22 MS. SCHNELLINGER: Objection.

23 THE COURT: Approach please.

24 - - - - -

25 (A conference was held at the

1 bench outside the hearing of the
2 jury.)

3 - - - - -

4 THE COURT: I'm going to note your
5 objection.

6 MS. SCHNELLINGER: It is the name
7 of the offense. I think he's trying to
8 make it worse, and it's asked and answered.
9 Been through this.

10 MR. KUHN: Your Honor, it's
11 pandering with child pornography.

12 MS. SCHNELLINGER: It is not the
13 pandering with child pornography at all.

14 MR. KUHN: Pandering --

15 MS. BIBLE: Pandering sexual
16 oriented material involving minors, that is
17 the name of the offense.

18 THE COURT: He's entitled to
19 present the entire name of the offense, not
20 the abbreviated one.

21 MS. SCHNELLINGER: I would ask it
22 be accurate.

23 MS. BIBLE: He's reading it from
24 CJIS.

25 MR. KUHN: I'm reading it from the

1 CJIS printout.

2 MS. SCHNELLINGER: I can provide
3 him with the Judgment Entry.

4 THE COURT: Do you have it?

5 MS. SCHNELLINGER: Uh-huh.

6 THE COURT: You can read it from
7 the Judgment Entry.

8 MR. KUHN: Okay, thank you.

9 (End of conference at the bench.)

10 - - - - -

11 BY MR. KUHN:

12 Q Okay, sir, let me rephrase that. The
13 offense you were convicted of, is its true
14 name, its complete name pandering sexually
15 oriented matter involving a minor?

16 A I believe it was gross sexual imposition
17 involving a minor.

18 Q Okay. I guess I don't have that here
19 before me, I'll take your word for it. I
20 appreciate you being honest with me.

21 You indicated you did have a
22 sexual relationship with Kayla; is that
23 correct?

24 A Yeah.

25 Q Okay. Did she know about your criminal

1 history?

2 A Yes, she did.

3 Q Okay. And you -- what month do you think
4 that relationship occurred in?

5 A I'm sorry?

6 Q Your relationship with Kayla, when do you
7 suppose that occurred?

8 A Well, when did it -- I'm not positive.
9 With -- within the three -- four months
10 that I've known her. It was like two --
11 two months after I've known her.

12 Q Okay. So you don't know if it was like
13 October, November, or December?

14 A I'm not positive about that.

15 Q Okay. Would you say you guys are friends
16 nowadays?

17 A I mean, do I want to see her go to jail?
18 No. I mean, do I care for her? Yeah. Do
19 I want to be here? No. But I wish the
20 best for her as far as her life goes, yeah.

21 Q Okay. Are you friends with Jeff still?

22 A Yeah.

23 Q Okay. Were you guys kind of buddies then?

24 A Yeah.

25 Q Is that how you met Kayla?

1 A Pretty much I met her through Brennan and
2 Jeff, yes.

3 Q Okay. Okay. Now you made a statement to
4 the police that you heard this threat; is
5 that correct?

6 A Yes.

7 Q Okay. And did you tell them that you heard
8 it the day before the fire happened?

9 A No. What I meant to put in the statement
10 was, I had talked to them the day before
11 the fire happened. I associated with them
12 the day before the fire happened.

13 Q When you say "with them," you mean Kayla
14 and her father?

15 A Well, yeah. I've associated with Brennan.
16 Actually he come up to my house.

17 Q Okay. Are you still on good terms with
18 him?

19 A Yeah.

20 Q Okay. Does he know that you guys had a
21 relationship?

22 A I'm not sure.

23 Q Okay. So you told the police that you
24 heard this threat the day before the fire
25 happened?

1 A I believe that's not what I put in the
2 statement. I believe that I put in the
3 statement that I had talked to them the day
4 before the fire.

5 Q Okay. So --

6 A I didn't indicate that I talked to them and
7 she had said that the day before the fire.

8 Q I'm sorry?

9 A I didn't indicate that she -- I didn't say
10 that she had talked to -- or she had said
11 that the day before the fire. I had just
12 said that I -- in the statement, I had
13 talked to them the day before.

14 Q Okay. If I showed you the statement that
15 you wrote to the police, would you
16 recognize it?

17 A Yes.

18 Q Okay.

19 MR. KUHN: Your Honor, may I
20 approach the witness?

21 THE COURT: Yes, you may.

22 MR. BARR: It's okay, we have it,
23 thank you.

24 BY MR. KUHN:

25 Q Okay. I'm marking -- I'm handing you

1 what's previously been marked Defendant's
2 Exhibit E. Can you tell me if you
3 recognize that document?

4 A Yes, I do.

5 Q Okay. And can you -- can you tell me, does
6 it say that you heard the threat?

7 A Yeah, it states it in there, yes.

8 Q Okay. And can you tell me what day it says
9 you heard that threat?

10 A It doesn't say a day.

11 Q Okay.

12 A I didn't put a date on it.

13 Q Okay. It says you're at their house on
14 October 2nd and it says you were helping
15 him with the boat, right?

16 A Yeah, it was the day before.

17 Q Okay. So it says you were there on the 2nd
18 helping him with the boat, you heard the
19 argument and you heard the threat; is that
20 correct?

21 A Yes, it is.

22 Q Okay. So that says you heard the threat on
23 October 2nd; is that correct?

24 A Yes. It states that in my statement, yes.

25 Q Okay. And is that true?

1 A I'm sorry, I didn't hear the threat on that
2 day, sir, but I did hear the threat.

3 Q Okay. So the threat wasn't that day?

4 A No.

5 Q When was it?

6 A I'm not sure what day it was, but it -- I
7 did hear the threat.

8 Q Okay. So the threat was some other day?

9 A Right.

10 Q Even though you said it was on October 2nd?

11 A I didn't mean to put it as October 2nd.

12 Q Okay. So that was a typo?

13 A Right.

14 Q Okay. Okay, so that's not what you meant
15 when you wrote that?

16 A Right. I'm sorry.

17 MR. KUHN: That's all I have,
18 thank you.

19 THE COURT: Thank you, Attorney
20 Kuhn.

21 State of Ohio?

22 MS. SCHNELLINGER: Thank you, Your
23 Honor, but I have nothing further.

24 THE COURT: Anybody wish to
25 reserve the right to recall this witness?

1 MR. KUHN: No, thank you, Judge.

2 MS. SCHNELLINGER: No, thank you.

3 THE COURT: Thank you, sir, you
4 may step down, you are excused.

5 Ladies and gentlemen, at this time
6 we're going to take a 15 minute recess,
7 give you time to stretch your legs, use the
8 restroom if you need to.

9 Again, do not discuss this case
10 among yourselves, do not permit anyone to
11 discuss it with you or in your presence.
12 And do not form or express any opinion on
13 the case until it is finally submitted to
14 you.

15 It is 10:38, we'll take about a 15
16 minute recess and we'll meet you back in
17 the jury room about 5 till 11 and continue
18 with the testimony in this case, okay?

19 THE BAILIFF: All rise.

20 (Thereupon, the jury exited
21 the courtroom at 10:38 a.m.)

22 THE COURT: All right. There's
23 just two things I want to put on the
24 record. One, I just want to note for the
25 record that both during yesterday's portion

1 of the trial as well as today's trial the
2 Defendant has been in, for lack of a better
3 word, street clothes the entire time, in
4 jeans and a black T-shirt, and she has not
5 been in any restraint in front of the jury.

6 Also I'll note that there was an
7 observer in today's trial that made hand
8 gestures towards the Defendant on two
9 separate occasions. She was then warned
10 not to make any other gestures, and she
11 persisted, during the testimony of Jeffrey
12 Ayers, to shake her head and make gestures
13 that suggested her agreement or
14 disagreement with the things that he said.
15 She was subsequently asked to leave and has
16 been escorted out of the courtroom, okay?
17 Just so that that's on the record.

18 We'll take a brief recess, again,
19 and we'll meet you back here at about 5
20 till.

21 MR. KUHN: Thanks, Judge.

22 THE COURT: Thank you. Also you
23 have all had a chance to look at the jury
24 instructions and they're okay with the
25 exception --

1 MR. KUHN: Yes, Judge. I don't
2 know if I would spot an error in there
3 anyway, but they look good to me.

4 THE COURT: I am going to change
5 the Judge's name and the date of the
6 verdict form. I also want you to know that
7 I -- the way I give my instructions, I'll
8 give the instructions of law first, then
9 give you the opportunity to make your
10 closing statement, and finish up with the
11 deliberating instruction. So they will
12 have the instructions of law first.

13 - - - - -
14 (Court recessed at 10:40 a.m. and
15 reconvened at 11:00 a.m., and the
16 following proceedings were had.)

17 THE COURT: We do have the
18 instructions finalized, give you copies if
19 there aren't any other additional changes.
20 And at this time is everybody ready?

21 MR. BARR: Yes, Your Honor.

22 THE COURT: Okay. And who was
23 your next witness?

24 MS. SCHNELLINGER: Jennifer
25 Conley, Your Honor.

1 THE COURT: Jennifer, okay. It's
2 my hopes to finish all the witnesses before
3 lunch, if you think that's possible?

4 MS. SCHNELLINGER: Yes.

5 THE COURT: And then we'll do a
6 lunch break, we'll do just the preliminary
7 law and the instructions, with respect to
8 the actual charges, you can make your
9 closing arguments, and then I'll give the
10 deliberating instructions after that, okay?

11 And you'll each have a half an
12 hour for closing. Again, feel free not to
13 take that whole time. And you can split it
14 up however you want, but at the very most
15 20 and 10.

16 MS. SCHNELLINGER: So the most
17 would be 10 for rebuttal?

18 THE COURT: Right.

19 MS. SCHNELLINGER: Okay, just
20 making sure.

21 (Thereupon, the jury reentered
22 the courtroom at 11:07 a.m.)

23 THE COURT: All right. Thank you,
24 and you may be seated.

25 At this time the State can call

1 its next witness.

2 MS. SCHNELLINGER: Thank you, Your
3 Honor. The State would call Jennifer
4 Conley.

5 THE COURT: Okay.

6 THE BAILIFF: Please raise your
7 right hand.

8 JENNIFER CONLEY

9 who, after being first duly sworn,
10 testified as follows:

11 THE COURT: You may inquire.

12 MS. SCHNELLINGER: Thank you.

13 DIRECT EXAMINATION

14 BY MS. SCHNELLINGER:

15 Q Will you please state your name and spell
16 your last name for the record?

17 A Jennifer Conley, C-O-N-L-E-Y.

18 Q Ma'am, where do you reside? Where do you
19 reside?

20 A Oh, 173 26th Street Southeast, Massillon,
21 Ohio.

22 Q How long have you lived there?

23 A Seven years.

24 Q And who do you live there with?

25 A My husband and four children.

1 Q What are the age ranges of your children?

2 A From 18 to 10.

3 Q Are you currently employed?

4 A Yes.

5 Q What do you do for a living?

6 A Nursing.

7 Q Are you currently in school also?

8 A Yes.

9 Q And for what?

10 A To finish my degree in RN.

11 Q How close is your residence to 186 [sic]

12 26th Street Southwest in Massillon?

13 A Right next door.

14 Q Are your properties right -- are they right
15 next to each other?

16 A They're a little bit apart, but pretty
17 close. They live like right there
18 (Indicating).

19 Q Okay. So the properties butt up against
20 each other?

21 A Yeah.

22 Q So true neighbors?

23 A Yeah, they're true neighbors, yeah.

24 Q An do you know the family that lived there
25 last year in 2012?

1 A Yes.

2 Q And can you describe your relationship with
3 them?

4 A Um-m, we talked. I mean, we were
5 neighborly. I, you know, helped them out
6 with a few things. We never had any
7 problems or anything.

8 Q Okay.

9 A It was more of a neighborly communication.

10 Q Okay. And did you know everybody that
11 lived there?

12 A Yes.

13 Q And did you become aware of a fire at this
14 neighbor's residence on October 3rd, 2012?

15 A Yes, I was at home.

16 Q How long were you home that day?

17 A I was home that whole day.

18 Q Whole day? Now, from your -- from your
19 home, how well can you see the house, your
20 neighbor's house, to be exact?

21 A Um-m, I can see it -- there's a pretty open
22 view in my dining room. I have a bay
23 window that's pretty big that you can see
24 directly over there. There's no trees or
25 anything in the way.

1 Q Okay. Do you remember what you were doing
2 that day?

3 A I was sitting at home watching TV.

4 Q And did you have occasion to observe your
5 neighbors that day?

6 A I mean, if I -- yeah, with the kids because
7 the children play outside and my own
8 children. So when I walked through the
9 dining room, I'm always looking out that
10 window.

11 Q Now, do you recall the coming and goings of
12 the people next door, your neighbors?

13 A Yes.

14 Q And these are the Ayers to be exact, the
15 Ayers family?

16 A Yes.

17 Q Do you remember seeing anybody outside the
18 house that day?

19 A I remember seeing two children outside that
20 I didn't -- wasn't sure of who they were.

21 Q Okay.

22 A They were playing next door in the yard.

23 Q You saw two children, they didn't live
24 there?

25 A No.

1 Q Had you seen them before?

2 A No.

3 Q Do you recall the time of day they were
4 there?

5 A They were there -- I'm not sure what time
6 they got there, but I know approximately
7 what time they left.

8 Q Okay. What were the circumstances around
9 when they left?

10 A Um-m, as in?

11 Q How did they leave? Did they just walk
12 away or what happened?

13 A Oh, no, I saw a truck pull up, I saw
14 Brennan get out of the truck and there was
15 another gentleman, I wasn't sure who it
16 was, and the children got in that truck.

17 Q And you said you recall the time they left?

18 A Uh-huh.

19 Q What time was that?

20 A It was approximately 5:30-ish.

21 Q Okay.

22 A Yeah. It was before the kids went to
23 church.

24 Q Okay. When -- tell me about going to
25 church. What do you mean by that?

1 A Um-m, there's a church bus that picks up
2 the children on Wednesday evenings about 10
3 after 6 or a quarter after 6. And I know
4 it was prior that I saw Brennan and them
5 get in that truck and leave before the
6 church -- you know, they came.

7 Q So they left before the church bus came
8 through?

9 A Right.

10 Q Okay. After Brennan and the unknown
11 gentleman and unknown kids left, did you
12 see any activity at the house?

13 A No.

14 Q What was the next activity you saw? Was it
15 the church bus?

16 A Right, I saw the two girls get on the
17 church bus with my own daughter at the
18 time.

19 Q Which two girls?

20 A Kayla's two girls.

21 Q Okay. After the church bus, did you -- was
22 there any other activity at the house?

23 A No, everything was quiet.

24 Q Okay. Did you see anybody else arrive?

25 A No.

1 Q What do you remember happening in your
2 neighborhood next?

3 A Um-m, I was sitting in the living room, the
4 window -- the front window was cracked open
5 a little bit, and it was about 8:00, and I
6 kept hearing -- I heard some screaming and
7 a lot of commotion outside. So I looked
8 out my front window and I didn't see
9 anything. And then as I went to the back
10 of the house, I saw Kayla -- or I saw
11 somebody standing outside. And I went out
12 the back door and looked over and said,
13 Kayla, what's going on? And as she was
14 coming towards me, the back of my property
15 with her son, and said that he -- that
16 Bubba started the fire, Bubba started the
17 fire.

18 Q What did you do?

19 A At that time I had my husband take the
20 little boy into the house and I noticed
21 that her hand was bleeding pretty bad. And
22 then my husband gave me the phone because
23 he was on the phone with 911 dispatch. So
24 I was trying to speak with them, and then
25 dealing with her hand, and then also we

1 were trying to put her Pit Bull up because
2 we knew the fire department was coming.

3 Q Okay. Where was the Pit Bull?

4 A It was out running in the yard.

5 Q Okay. Now where were you when you were
6 doing all this stuff?

7 A I was on -- I was at their property --
8 their residence, Kayla's residence, at that
9 time.

10 Q Where exactly on the property?

11 A On the side of the house, which would be
12 like their backyard.

13 Q Okay. So what did you do next?

14 A Um-m, after we got the dog tied up, my
15 husband brought us a bunch of wrap -- or
16 towels and stuff, and I was wrapping up her
17 hand. Karen was asking her where the other
18 two girls were, where her children were,
19 the other two, because she didn't know
20 where they were.

21 Kayla was -- she wasn't able to
22 really respond to her. All she kept doing
23 was repeating was she going to lose -- Am I
24 going to lose my kids, am I going to lose
25 my kids? We kept telling her repeatedly,

1 don't worry about that, that wasn't
2 something to worry about at that time. I
3 was more concerned about her hand.

4 Q Where did Karen come from?

5 A She came from the property. Her car was
6 parked in the driveway.

7 Q Did you see her arrive?

8 A No, I did not.

9 Q Okay. Describe the Defendant's -- I'm
10 sorry. Do you see the individual you
11 referred to as Kayla in the courtroom?

12 A Yes.

13 Q Can you point her out for the Court and the
14 jury?

15 A She's sitting right over here.

16 Q Describe what she's wearing.

17 A All black and a pair of jeans, kind of
18 looks dark over there.

19 MS. SCHNELLINGER: May the record
20 reflect she has identified the Defendant?

21 THE COURT: The record will so
22 reflect.

23 BY MS. SCHNELLINGER:

24 Q Can you describe the Defendant's demeanor
25 that night?

1 A She was -- she was very upset. She just
2 wasn't -- she wasn't there, like she
3 just -- it's so hard to -- I'm having a
4 terrible time describing it, but she would
5 kind of like go into like a blank stare at
6 times, and then she would come back and be
7 very upset and agitated and worrying about
8 losing her children.

9 Q Okay. Did you notice anything else about
10 her?

11 A Yeah, there was a strong burnt smell -- it
12 was like a marijuana smell with like a
13 burnt smell to it, but I don't --

14 Q Do you know where it was coming from?

15 A That was coming from her breath when she
16 was sitting on my front porch, and I was
17 holding her arm at that time.

18 Q So you were holding onto her?

19 A Yeah, I had to hold onto her, she was
20 bleeding pretty good.

21 Q You said it smelled like burnt marijuana?

22 A Uh-huh, yeah.

23 Q Have you had occasion to be around the
24 smell of burning marijuana before?

25 A Yeah.

1 Q So you know what it smells like?

2 A Right.

3 Q Now, you said your husband took the
4 3-year-old boy, Bubba --

5 A Uh-huh.

6 Q You refer to him as Bubba?

7 A Yes.

8 Q Took him into the house?

9 A Correct.

10 Q Did you have any contact with him?

11 A Not until after Kayla went to the hospital
12 I did.

13 Q When you had contact with him, how was he
14 acting?

15 A He was real shy, stand-offish a little. He
16 had a lot of blood from -- on his shirt,
17 and we were getting him cleaned up and
18 putting our daughter's clothes on him.

19 Q Did you do anything else that night
20 regarding the fire?

21 A No.

22 Q Did you do anything else regarding the
23 children?

24 A Um-m, yes, we kept the two children that
25 came home from the church bus and the

1 little boy at that time.

2 Q You kept them at your house?

3 A Yes, we kept them there, yeah.

4 Q They stayed with you?

5 A They stayed with us for ten days until
6 family members from South Carolina could
7 come get them so they wouldn't have to go
8 to foster care.

9 Q You said the two other girls came home on
10 the church bus?

11 A Uh-huh.

12 Q When did that happen?

13 A That happened about 8:30. Usually the
14 church bus is there between 8:30 and 20
15 till 9.

16 Q And that's when they showed up?

17 A Yes.

18 Q Is the fire department there at that time?

19 A Yes.

20 Q Now, after the fire, do you recall talking
21 to the Defendant on the phone or --

22 A Yes.

23 Q -- talking to her on the phone a couple
24 days after the fire?

25 A Yes.

1 MS. SCHNELLINGER: With the
2 Court's permission, I would like to play
3 part of that phone call.

4 THE COURT: Okay.

5 MS. SCHNELLINGER: One second.

6 (Thereupon, the audiotape
7 was played for the jury.)

8 THE COURT: I don't know if they
9 can hear it very well.

10 Can you all hear that?

11 JUROR #30: No. It says
12 presentation mode is off on this screen.

13 THE BAILIFF: Your Honor, if we
14 could maybe have the computer person come
15 down?

16 THE COURT: Sure. Bear with us
17 just a little bit. Technology is a
18 wonderful thing, when it works.

19 Can you hear it now okay?

20 (Thereupon, the audiotape
21 was played for the jury.)

22 BY MS. SCHNELLINGER:

23 Q Were you able to hear that?

24 A Yeah.

25 Q And you stated you had a conversation with

1 the Defendant, Kayla, a couple days after
2 the fire; is that correct?

3 A Correct.

4 Q Do you recognize the voice on that?

5 A Yes.

6 Q And whose voice was that?

7 A Kayla Ayers.

8 MS. SCHNELLINGER: If I could have
9 one moment?

10 THE COURT: Yes, please.

11 MS. SCHNELLINGER: I have nothing
12 further, Your Honor, thank you.

13 THE COURT: Okay. Thank you.

14 Attorney Kuhn, you may inquire.

15 MR. KUHN: Thank you.

16 CROSS-EXAMINATION

17 BY MR. KUHN:

18 Q Good morning, ma'am, how you doing today?

19 A Good, good.

20 Q You're Kayla's neighbor; is that correct?

21 A Correct.

22 Q Sounds like you're pretty helpful through
23 this whole ordeal; is that right?

24 A I try to be.

25 Q Good. You indicated that you smelled

1 something that you thought might be
2 marijuana coming from Kayla?

3 A I stated that there was a burnt smell of
4 marijuana.

5 Q Some kind of burnt smell, right?

6 A Uh-huh.

7 Q Have you ever been around a mattress fire?

8 A Yes.

9 Q So you know and you recall what the smell
10 of a burnt mattress is?

11 A Yes, I do.

12 Q Okay. When were you around a mattress
13 fire?

14 A My in-laws had them.

15 Q Okay. They have mattress fires?

16 A Uh-huh.

17 Q Like a recreational type thing?

18 A No, it's not a recreational thing. But
19 I've been there when -- you know, they get
20 rid of the mattresses or the family members
21 will take the mattresses down there because
22 they have a big farm. But this wasn't
23 coming from her clothes, this was coming
24 from her breath that I was very close to.
25 Q Okay. Did her clothing have a smell to

1 you?

2 A Huh-uh.

3 Q Did her hair?

4 A No.

5 Q Okay. Did you smell smoke at any time?

6 A It was a lot coming from the house at that
7 time.

8 Q Did Bubba smell like smoke?

9 A No.

10 Q Okay. And Bubba was brought over almost
11 immediately to your home; is that correct?

12 A Right.

13 Q You said you had Bubba and the other kids
14 for ten days?

15 A Yes.

16 Q Okay. And you said you're in nursing; is
17 that correct?

18 A Correct.

19 Q Are you a nurse somewhere?

20 A Yes.

21 Q Where's that?

22 A Astoria.

23 Q Is that like --

24 A It's a rehabilitation place.

25 Q Okay. Do you know if Bubba was familiar

1 with cigarette lighters?

2 A When he was in our house over those ten
3 days, actually all of the kids did it, if
4 they seen a lighter laying around, they
5 immediately picked it up and brought it to
6 us.

7 Q Okay. So they knew there was some
8 significance about lighters; is that
9 correct?

10 A Yes. Yes.

11 Q Did you ever see Bubba try to light a
12 lighter?

13 A No.

14 Q Okay. But you did see him with one in his
15 hands; is that correct?

16 A If he seen one in our house, yeah, he
17 brought it to us.

18 Q So he would pick it up and bring it over to
19 you?

20 A Uh-huh.

21 MR. KUHN: I think that's all I
22 have. Thank you.

23 THE COURT: Thank you, Attorney
24 Kuhn.

25 Any redirect?

1 MS. SCHNELLINGER: No, Your Honor,
2 thank you.

3 THE COURT: And anybody wish to
4 reserve the right to recall this witness,
5 or is she excused?

6 MR. KUHN: No, Your Honor.

7 MS. SCHNELLINGER: No, thank you.

8 THE COURT: All right, ma'am, you
9 may step down, you are excused.

10 MR. BARR: At this time, Your
11 Honor, the State would call Karen Ball.

12 THE COURT: Okay.

13 THE BAILIFF: Ma'am, if you would
14 just come over to the witness stand, raise
15 your right hand.

16 KAREN BALL
17 who, after being first duly sworn,
18 testified as follows:

19 THE COURT: Attorney Barr, you may
20 inquire.

21 MR. BARR: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BARR:

24 Q Ma'am, if you would, state your name and
25 spell your last name for the court reporter

1 please.

2 A Karen Ball, B-A-L-L.

3 Q Karen, where do you live?

4 A Navarre.

5 Q And who do you live with?

6 A My husband and son.

7 Q Are you employed anywhere right now?

8 A No, I'm not.

9 Q Where were you last employed?

10 A I was employed at NeuroCare.

11 Q Did you retire from NeuroCare?

12 A Yes, I had to take a medical retirement.

13 Q How many children do you have?

14 A Seven.

15 Q Seven?

16 A Uh-huh.

17 Q And some of those are adopted?

18 A Yes, two of them are adopted.

19 Q Do you attend church regularly?

20 A Yes, I do.

21 Q And what church do you attend?

22 A Cornerstone Baptist.

23 Q How long have you been going to
24 Cornerstone?

25 A Since 1989.

1 Q Does Cornerstone have what they call a bus
2 ministry?

3 A Yes, we do.

4 Q What is a bus ministry?

5 A A bus ministry is an outreach program that
6 we go into areas and we, with permission of
7 parents, pick up children and take them to
8 church.

9 Q When you take those children to church, do
10 you also try to get to know their parents?

11 A Yes, we do. We try to get a rapport with
12 the parents.

13 Q As a result of your participation in that
14 bus ministry, did you meet an individual by
15 the name of Kayla Ayers?

16 A Yes, I did.

17 Q Do you see Kayla in the courtroom today?

18 A Yes, I do.

19 Q Could you tell me what color shirt she has
20 on please?

21 A I believe it's black.

22 MR. BARR: Your Honor, let the
23 record reflect she's identified the
24 Defendant.

25 THE COURT: The record will so

1 reflect.

2 BY MR. BARR

3 Q Did Kayla's children attend the bus
4 ministry?

5 A Yes.

6 Q As a result, did you meet Kayla?

7 A Yes, I did.

8 Q When do you recall first meeting Kayla?

9 A It was last summer. I believe it was in
10 July.

11 Q Okay.

12 A I believe it was in July.

13 Q Now, how do you go about meeting the
14 children's parents? Do you go to their
15 home, do you -- what do you do?

16 A Yes, we weekly go -- the children that go
17 on the bus, we make a weekly visit to the
18 house, we go to the house, knock on the
19 door, we talk to the parents to keep the
20 parents informed of what's going on.

21 Q And were you by yourself when you first met
22 Kayla, or was somebody with you?

23 A No, the very first time I met Kayla, our
24 pastor's wife and another lady was with me.

25 Q And after that first time, did you continue

1 to meet Kayla?

2 A Yes.

3 Q How often would you see her?

4 A I would see her about once a week.

5 Q Was there a special night that you would
6 see her, or would it vary?

7 A No, it would vary. It depended on what her
8 schedule was and what mine was.

9 Q During that time, from the time you met her
10 till -- until up until October 3rd, did her
11 children continue to participate in the bus
12 ministry?

13 A Oh, yes.

14 Q Did there come a time when you would start
15 to see Kayla more than once a week?

16 A Yes, that was -- I believe it was around
17 the end of August.

18 Q And how often would you see her then?

19 A I was -- we actually saw her about twice a
20 week.

21 Q Okay. And what was the purpose of seeing
22 her twice a week?

23 A We were meeting to do various things to
24 help if she needed to go someplace, but the
25 main goal was for us to have a Bible study

1 together.

2 Q Did you do a lot of Bible studying?

3 A Actually, no.

4 Q What did it end up being more of?

5 A Talking about Kayla, her life, and, you
6 know, things that she wanted to do. So the
7 Bible study itself was very short.

8 Q Did that continue all the way up until
9 October 3rd of 2012?

10 A Yes.

11 Q So you met her in July and your
12 relationship with her continued up until
13 October the 3rd of 2012.

14 Do you recall between those months
15 approximately how many times Kayla actually
16 attended church with you?

17 A I believe -- I'm not positive, but I think
18 it was six times.

19 Q Now, do you go every Wednesday and Sunday?

20 A Every Wednesday and Sunday, yes, I do.

21 Q Did you have occasion to see Kayla on
22 Tuesday, October 2nd?

23 A I don't -- I'm trying to think, but I don't
24 think it was actually Tuesday. I believe
25 it was Monday, the 1st.

1 Q Okay. And where did you see Kayla?

2 A I went to her house and picked her up to go
3 to -- I think it's called Stark Metro
4 Housing.

5 Q Okay. Why were you going there?

6 A Um-m, Kayla was going to need to leave
7 where she was staying, and I was trying to
8 get her to a place that maybe she could
9 find housing for her and her children.

10 Q Were you aware of why Kayla needed to leave
11 where she was staying?

12 A The reason that I was told was her dad, who
13 rented the house, and Tonya and the kids
14 were leaving, and that they were to also
15 leave.

16 Q Okay. Now when you saw her on October 1st,
17 which would have been Monday, did you make
18 plans to go to church with her that week?

19 A Yes, I did.

20 Q What night were you going to go to church
21 with her?

22 A Wednesday.

23 Q Now, would Kayla ride the bus?

24 A No, Kayla was anxious on the bus so that's
25 why I was picking her and the children up.

1 Q When -- when Kayla would go to church,
2 would you pick her up and take her to
3 church?

4 A Yes.

5 Q Were there times that you went to get her
6 and she wasn't there to go to church?

7 A Yes.

8 Q On -- so if you saw her on Monday, October
9 1st, and the plans for church would have
10 been Wednesday, October 3rd --

11 A Yes.

12 Q -- when you said you would pick her and the
13 kids up, would that include the older
14 girls?

15 A No, it was only Kayla's three children that
16 I picked up.

17 Q But on Wednesday, October 3rd, were you
18 planning on picking up Kayla's older girls,
19 too?

20 A Yes, I was planning on picking up Kayla and
21 her three children.

22 Q Okay. Do you recall about what time you
23 got there to pick her up?

24 A Yes, it was about 6:30.

25 Q I'm going to --

1 MR. BARR: Ms. Flowers, can I have
2 the docucamera please?

3 THE BAILIFF: Sure.

4 MR. BARR: Thank you. In just a
5 minute, hopefully.

6 BY MR. BARR:

7 Q Can you see that on the screen there?

8 A Yes, I can.

9 Q That is what has been marked as State's
10 Exhibit 3H. Do you recognize that?

11 A Yes, that's the house Kayla was living in.

12 Q So you say you got there about 6:30 on
13 Wednesday, October 3rd to pick her up?

14 A Yes, yes.

15 Q Which door did you go to?

16 A This door that's on your far right-hand
17 side. It's like the basement door.

18 Q I'm going to circle that one. That one
19 (Indicating)?

20 A Yes, that one.

21 Q And what happened when you knocked on that
22 door?

23 A Um-m, I knocked on the door, but nobody
24 answered at first, but the dog came to the
25 window and was barking.

1 Q Uh-huh.

2 A And I heard like a shush -- shushing, like
3 "shh," and I knocked again, nobody came,
4 and then so I went to the other door.

5 Q And the other door you're referring to, is
6 that this door over here?

7 A Yes. Which -- um-m, the kitchen door.

8 Q Okay.

9 A It's -- yeah, it was right behind there.

10 Q Now, when you knocked on the kitchen door,
11 what did you hear?

12 A Um-m, I didn't hear anything but the dogs
13 barking.

14 Q Did you see anything?

15 A Only -- only the big white dog.

16 Q Did you see anything while you were
17 knocking at either door --

18 A Um-m, I did on the -- on the deck that was
19 there, that little deck, there's like a
20 wicker couch or chair, and Kayla's purse
21 that I had seen her carry quite often and a
22 backpack that I thought might have been
23 Layla's.

24 Q Did anybody ever come to the door?

25 A No.

1 Q So what do you do?

2 A After I had knocked twice, I went down the
3 steps to my car. Um-m, as I was getting to
4 my car, I wanted to get my cane because I
5 had saw this flickering and I could -- and
6 I also smelled a little like smoke --

7 Q Let me back you up here.

8 A Okay.

9 Q This is when you went to pick her up for
10 church?

11 A This is -- no, I'm sorry. When I went to
12 pick her up -- I'm sorry.

13 Q That's okay.

14 A When I went to pick her up, I left that
15 door, that back door, I was headed to my
16 car, and the neighbor stopped me.

17 Q Okay. Did you have a conversation with the
18 neighbor?

19 A Yes, I did.

20 Q And then did you continue on to church?

21 A Um-m, yes. I left there -- it was about 10
22 till 7 when I left there.

23 Q As a result of that conversation with the
24 neighbor, did you think that Kayla was in
25 the house?

1 A Yes.

2 Q But you went to church?

3 A Yes.

4 Q What time does church start?

5 A Starts at 7.

6 Q And what time does church end?

7 A It ends at 8.

8 Q Did you stay all the way until 8:00?

9 A Not quite 8. I -- they were giving closing
10 prayer and I left.

11 Q Why did you leave a little bit early?

12 A Because I was uneasy about Kayla not
13 answering the door. I just felt very
14 uneasy and I wanted to go back to check.

15 Q Did you drive straight from the church to
16 Kayla's residence?

17 A I drove straight from the church to Kayla's
18 house.

19 Q And where did you park?

20 A And I parked in the drive because -- that's
21 where I park was in the drive.

22 Q Okay.

23 A The reason I parked in the drive, as I came
24 down Connecticut and I saw that door, I saw
25 in that window flickering.

1 Q Okay. And you're saying -- when you say
2 the window, you're referring to this window
3 right here (Indicating)?

4 A That window there, yes.

5 Q That's a basement window?

6 A That's a basement window.

7 Q You saw some flickering?

8 A Yes.

9 Q Now, let me ask you about this, Karen. At
10 that time you indicated, the first time you
11 were there, that you have a cane?

12 A Yes, I have a walking stick I have to
13 use -- I had to use.

14 Q Were you having some trouble walking back
15 then?

16 A Yes, quite a bit.

17 Q So when you see the flickering, you park
18 your car, what do you do?

19 A I parked my car and I went to this basement
20 door, that's what I call basement door,
21 because that's normally where she would
22 come out. And I knocked on the door and I
23 jiggled the handle, and nobody answered.

24 Q Did the dogs bark?

25 A The dogs were barking.

1 Q When you say "the basement door," we're
2 referring to this door?

3 A Yes, that one.

4 Q Did you knock more than once?

5 A I -- yes, I did.

6 Q Did you holler or scream or do anything?

7 A I kept saying, Kayla, Kayla.

8 Q Did anybody respond?

9 A No, just the dogs barking.

10 Q So what do you do then?

11 A Okay, then I went from that door and I
12 walked over to the kitchen door where that
13 like little deck is. Yeah.

14 Q That's that door (Indicating)?

15 A And I knocked on that door and said --
16 asked, Kayla, Kayla? And nobody answered,
17 only the dog barking. And I jiggled the
18 door, but it wouldn't open.

19 Q Again, did you knock more than once?

20 A I knocked more than once.

21 Q And I believe you indicated when you were
22 there the first time you saw a purse and a
23 backpack on the wicker chair or couch or
24 something --

25 A Yes.

1 Q -- on that deck?

2 A Yes.

3 Q Was that still there?

4 A I don't remember if it was or not.

5 Q After you knocked on that -- what you've
6 referred to as the kitchen door and you've
7 knocked on this other door, how much time
8 do you think has elapsed?

9 A That's probably close to ten minutes.

10 Q Is it because it took you so long to walk
11 at that time?

12 A Yes, because I was having a lot of
13 difficulty in walking.

14 Q After you get no response at the kitchen
15 door, what do you do?

16 A I went down to my car personally to get my
17 cane. And I was going to go to the
18 neighbor's house and -- because I didn't
19 have a cell phone. That's what I did next.

20 Q Now, when you get to your car, tell me what
21 happens.

22 A Um-m, I got to my car and I was trying to
23 get my stick out and I heard this "thump
24 thump" and I looked up and it was Kayla,
25 she had come down the stairs and she came

1 in and like slammed up against my car door,
2 and stated that -- she said, Mrs. Ball,
3 call 911, Bubba set the house on fire.

4 Q Mrs. Ball, call 911, Bubba set the house on
5 fire?

6 A Yes.

7 Q Did you see Bubba at that time?

8 A I saw what I believed was him because it
9 was dusk, but the little figure on that
10 deck.

11 Q Okay. And when you say the deck, are you
12 referring to this area up here? Or back
13 here?

14 A Um-m, back over here by the kitchen door.

15 Q And this is the kitchen door, right?

16 A Yes.

17 Q Okay. And from where your car was parked,
18 you could see over there?

19 A Yes, my car was in the driveway at that
20 time. I had pulled into the driveway.

21 Q Okay. So you saw Bubba on the deck at that
22 time?

23 A Yes.

24 Q So Kayla comes out and tells you, Mrs.
25 Ball, call 911, Bubba set the house on

1 fire, what happens next?

2 A I immediately, as fast as I could, went
3 over to the neighbor's and pounded on his
4 door and asked him to please call 911, that
5 their house was on fire. And he responded
6 to it.

7 Q Now do you go back to your car at that
8 point?

9 A I went back to -- I went around my car to
10 Kayla.

11 Q And does anybody else show up?

12 A Um-m, as I'm yelling, I see people around
13 and I'm yelling that their house is on
14 fire. I saw Jen Conley and some people
15 over there and told them that the house was
16 on fire, and then we realized -- then I
17 realized Kayla's hand was all bloody, and I
18 yelled at her we needed something for
19 Kayla's hand, it was bleeding.

20 Q Do you stay at your car, or do you go
21 somewhere else?

22 A No, we went to the car. There was a truck
23 cap sitting, and that's where we were
24 standing in front of.

25 Q Okay. Where was Bubba at that time, do you

1 recall?

2 A I remember seeing him standing over there
3 by Mrs. Conley and the other people that
4 were standing there.

5 Q Okay. What's Kayla doing at this time?

6 A She's, um-m, just really just like nervous,
7 just not really doing anything. And I
8 asked her, where are the girls because I
9 didn't know they had gotten on the church
10 bus because I was supposed to pick them up.
11 And she did not respond to me. And I sat
12 her on the cap, the truck cap, and I kept
13 asking her, Where are the girls, where are
14 the girls? And she did -- just didn't
15 respond. And Mrs. Conley came over then
16 and said, It's okay, I saw the girls get on
17 the bus.

18 Q Do you stay there with Kayla?

19 A Yes.

20 Q Do you ever take her anywhere else?

21 A At that point the dog was kind of growling
22 and I'm saying, We have to get the dog on
23 its chain. And so the dog was not happy
24 with me so Jen was more used to the dogs,
25 and Kayla and her got the dog on the chain.

1 As they were doing that, um-m, I
2 saw the bus starting down the road so I
3 took off over to the bus to tell them, you
4 know, get the girls off and move the bus
5 because the fire department was on its way.

6 Q Okay. The fire department eventually
7 arrives?

8 A Yes.

9 Q Do you -- do you stay there longer?

10 A Yes. After the girls -- some of the kids
11 got the two little girls back into Jen's
12 house, and I drove back to Kayla and we go
13 and sit on Jen's front porch on the steps.

14 Q And what is Kayla doing at that point in
15 time?

16 A Well, she's rocking back and forth and her
17 hand, it was wrapped, but she's like non --
18 not really responding. She's more like
19 rocking back and forth.

20 And then what she -- the fireman
21 came over to ask her some questions. And
22 she, at first, wasn't really responding,
23 and we were rubbing her back. Jen said,
24 You need to answer his questions, you know.
25 And then she looked at me and asked me if

1 she was going to lose her children now.

2 Q Okay. Did she say that to you more than
3 once?

4 A Yes. Um-m, after they had talked to her,
5 um-m, and the paramedics I think that came
6 and they wanted to get her over to that so
7 they could treat her, I walked with the one
8 fireman with her over there. And as we
9 were walking over there she asked me again,
10 Mrs. Ball, am I going to lose my children
11 now?

12 Q Did you ever get to see Bubba that night up
13 close?

14 A I did not see him up close, no.

15 Q After this, did you continue to have
16 contact with Kayla?

17 A Yes. When she was over at the Stark County
18 Jail, I did visit her over there.

19 MR. BARR: If I could have one
20 minute, Your Honor.

21 THE COURT: Yes, you may.

22 MR. BARR: No further questions,
23 Your Honor.

24 THE COURT: Thank you.

25 Attorney Kuhn, you may inquire.

1 MR. KUHN: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. KUHN:

4 Q Good morning, ma'am, how are you today?

5 A Okay.

6 Q Good. Sounds like you've been pretty
7 helpful to Ms. Ayers throughout this whole
8 ordeal; is that right?

9 A Well, I tried. I tried.

10 Q Good. You indicated that Kayla, I guess,
11 didn't answer you about where the girls
12 were when you asked her?

13 A Right.

14 Q Okay. And is it possible that that's
15 because she was confused because the girls
16 were at church where she thought maybe you
17 would have seen them?

18 A Um-m, I -- anything's possible. Yeah, that
19 could be possible.

20 Q Okay. When you were chauffeuring Ms. Ayers
21 around, did she ever mention trying to rent
22 that home on her own?

23 A Okay, on Tuesday, I had called and talked
24 to her to make sure things were okay and we
25 were still set for Wednesday. And that is

1 when she told me that she would not be
2 leaving there, that she was going to take
3 over renting that when her dad left. And I
4 asked her if she had talked to the
5 landlord, and she had not talked to him at
6 that -- but she was convinced that that's
7 what he was going to allow her to do was
8 for her to take over the house.

9 Q Okay. So it's your belief that that was
10 her intent?

11 A Yes.

12 Q Okay. When you were at the home the night
13 of the fire, did you notice any gas cans
14 laying around?

15 A No, I didn't.

16 Q You said you did speak with Kayla that
17 evening, though, right, after the fire?

18 A Yes, I did.

19 Q Did she smell like gasoline?

20 A No, I didn't smell gasoline.

21 Q Okay. Did you go in that house at all that
22 night?

23 A No, I didn't.

24 Q Did Kayla tell you that -- where her injury
25 came from?

1 A What she told me was -- when I asked her,
2 you know, what happened, she said that she
3 cut her hand on a glass that she was trying
4 to put the fire out with. She was getting
5 the water from the washer.

6 Q Okay.

7 MR. KUHN: I think that's all I
8 have, thank you.

9 MR. BARR: No further questions.

10 THE COURT: Okay. Anybody wish to
11 reserve the right to recall this witness at
12 all?

13 MR. BARR: No, thank you.

14 MR. KUHN: No, Judge.

15 THE COURT: Thank you, ma'am, you
16 may step down, you are excused.

17 MR. BARR: May we approach, Your
18 Honor?

19 THE COURT: Yes, you may.

20 - - - - -

21 (A conference was held at the
22 bench outside the hearing of the
23 jury.)

24 - - - - -

25 MR. BARR: Subject to the

1 admission of our State's Exhibits, we are
2 prepared to rest.

3 THE COURT: Okay. Do you want to
4 do your exhibits now? Do you intend on
5 calling any witnesses?

6 MR. KUHN: We do not intend.

7 THE COURT: Why don't we do this,
8 you can say that you rest and then you can
9 say that you don't intend to call any
10 witnesses, give them lunch, and then deal
11 with your exhibits.

12 (End of conference at the bench.)

13 - - - - -

14 THE COURT: All right. State of
15 Ohio, you can call any more witnesses that
16 you do have.

17 MR. BARR: Your Honor, at this
18 time, subject to the admission of marked
19 State's Exhibits, we are prepared to rest.

20 THE COURT: Okay, thank you.
21 State having rested subject to the
22 admission of its exhibits, Attorney Kuhn,
23 at this time you can call your first
24 witness.

25 MR. KUHN: Your Honor -- if I can

1 just have a moment?

2 THE COURT: Yes, you may.

3 MS. BIBLE: Can we approach?

4 THE COURT: Yes.

5 - - - - -

6 (A conference was held at the
7 bench outside the hearing of the
8 jury.)

9 - - - - -

10 MS. BIBLE: We rest. For the
11 Court of Appeals, he has to make his
12 motion.

13 THE COURT: Go ahead.

14 MR. KUHN: Judge, at this point I
15 would make my Rule 29 motion for acquittal.

16 THE COURT: It is denied.

17 (End of conference at the bench.)

18 - - - - -

19 THE COURT: Okay. At this time,
20 Attorney Kuhn, you may call any witnesses
21 that you do have.

22 MR. KUHN: Thank you, Judge, at
23 this time we would rest. Thank you.

24 THE COURT: Very good. Ladies and
25 gentlemen, you have heard all the evidence

1 you are going to hear in this case. At
2 this point we are going to take a lunch
3 recess, and we're going to reconvene at
4 1:00. When we reconvene, I will give you
5 some instructions of law with respect to
6 the charges and the law that applies to
7 those charges. Then the attorneys in the
8 case will have the opportunity to make
9 closing statements to you.

10 The State will go twice because it
11 bears the burden of proof in this case.
12 After that, I will give you some
13 deliberating instructions, and then you
14 will begin your deliberating process.

15 Now you've been on my schedule for
16 the past two days, and once you go back to
17 deliberate, I'm on your schedule. So you
18 can take as much time as you need in
19 considering this case, but that is my plan
20 for the rest of the afternoon.

21 So hopefully you will have this
22 case by at least 2:30, okay? And then what
23 you do with it after that is up to you.

24 All right. So we're going to take
25 a lunch break at this point, we'll

1 reconvene and pick you up in the jury room
2 again at 1:00.

3 THE BAILIFF: All rise.

4 THE COURT: Oh, I'm sorry. Again,
5 I know I'm going to sound like a broken
6 record, during the lunch recess do not
7 allow anyone to talk about the case in your
8 presence, do not discuss the case among
9 yourselves. And, again, don't form or
10 express any opinion as to your decision in
11 this case until it is finally given to you
12 after we go through the instructions and
13 closing statements, okay?

14 (Thereupon, the jury exited
15 the courtroom at 11:58 a.m.)

16 THE COURT: Okay.

17 MR. BARR: Sorry.

18 THE COURT: That's okay.

19 MR. BARR: Off the record.

20 (Thereupon, a discussion
21 was had off the record.)

22 MR. BARR: At this time, Your
23 Honor, the State would move for
24 introduction into evidence of State's
25 Exhibit 1 and State's Exhibit 1A. And let

1 me explain that, State's Exhibit 1 is the
2 edited copy --

3 THE COURT: Okay.

4 MR. BARR: -- of the statement
5 that we played in the courtroom. And I
6 intend to introduce that for the jury. 1A
7 is the unedited version which I'm just
8 entering for appellate purposes and for the
9 record.

10 THE COURT: Okay.

11 MR. BARR: And, of course, the
12 envelope will not go back. It's marked as
13 State's Exhibit 1, but it won't go back to
14 the jury.

15 THE COURT: Okay.

16 MR. BARR: State's Exhibit 2 which
17 are the jail calls which, if the jury wants
18 to listen to those, the bailiff will have
19 to play them for them because there's only
20 snippets of those calls that were played.

21 And then State's Exhibits 3A
22 through Q which are photographs of the
23 crime scene. And I believe counsel for
24 Defendant has had an opportunity to review
25 those exhibits.

1 THE COURT: Okay. With respect to
2 the State's Exhibits, do you have any
3 objection?

4 MR. KUHN: I don't have any
5 objection, Judge, I guess I just wanted to
6 make sure that the jury would only be
7 permitted to view the edited videotape --

8 THE COURT: Yes.

9 MR. KUHN: -- and only listen to
10 the very short snippets of the jail calls?

11 THE COURT: And so it's my
12 understanding, with respect to Exhibit 2,
13 there's only two phone calls?

14 MS. SCHNELLINGER: Yes, Your
15 Honor.

16 THE COURT: The only two there
17 were played. That's all there is on that
18 tape?

19 MS. SCHNELLINGER: Oh, no, no, no,
20 there's multiple phone calls on there, but
21 only two were played, and only short
22 portions of them.

23 THE COURT: And those would be the
24 only portions that would be permitted to be
25 played.

1 MR. BARR: Yes. And we can give
2 the bailiff specific instructions as to
3 where those start and where they stop so
4 that you can pull them up and identify them
5 by date and time.

6 THE COURT: And they're easily
7 identifiable?

8 MR. BARR: Yes, yes.

9 THE COURT: Okay. She's shaking
10 her head like she knows what she's doing.
11 That's okay.

12 THE BAILIFF: I'm a lawyer, not a
13 computer technologist.

14 THE COURT: I know. You're a Jack
15 of all trades, you do it all.

16 All right. But then no objections
17 to State's Exhibit 1 and 1A, will both be
18 admitted. However, the jury will only be
19 given State's Exhibit 1. State's Exhibit 2
20 and State's Exhibits 3A through 3Q will
21 also be admitted.

22 All right. Attorney Kuhn?

23 MR. KUHN: Thank you, Judge. Just
24 at this time, having rested, we would renew
25 our Rule 29(A) motion for acquittal.

1 THE COURT: And that motion will
2 be denied.

3 MR. KUHN: Thank you, Judge.

4 THE COURT: Do you have any
5 exhibits that you want to introduce?

6 MR. KUHN: No, I don't believe so,
7 Judge, thank you.

8 MS. BIBLE: You need those,
9 because you marked those.

10 THE COURT: Well, if you don't
11 want them to go back to the jury, I guess
12 they don't have to.

13 MR. BARR: Well, but she needs
14 them for the appellate purposes.

15 (Thereupon, a discussion
16 was had off the record.)

17 THE COURT: I have A, D, and E.

18 MR. KUHN: I'm sorry, what was it,
19 Judge?

20 THE COURT: I have A, D, and E.

21 MR. KUHN: A, D, and E?

22 THE COURT: Does that jibe with
23 what you have?

24 MR. KUHN: Here's E.

25 MR. BARR: The other two were from

1 the fire report.

2 MR. KUHN: Right.

3 THE COURT: And if, for whatever
4 reason, you want to introduce that for
5 whatever potential -- not obviously for the
6 jury, but if you want to make it part of
7 the record, for whatever purpose you may
8 eventually have for it, that's fine.

9 MR. KUHN: Have to find them
10 first.

11 MR. BARR: I gave them back to
12 you; didn't I?

13 MR. KUHN: I'm sure you did.

14 THE BAILIFF: Do you want me to
15 get these ready?

16 THE COURT: Yes. And during the
17 lunch break, it is our intention to make
18 copies of the jury instructions. Have you
19 had an opportunity to take a look at those?
20 Do you have any issues with those?

21 MS. BIBLE: No.

22 THE COURT: The only changes we
23 made was really to change the name, the
24 Judge's name, the item in the instruction
25 which respect to a witness's criminal

1 conviction, and change the date on the
2 verdict form as well as just change the
3 layout a little bit to incorporate with
4 respect that I do them a little differently
5 than Judge Brown, and I instruct first and
6 then give you the opportunity to do your
7 closing statement, okay?

8 MS. BIBLE: Okay.

9 THE BAILIFF: I'm going to fix
10 this on page 6, it fell outside the line,
11 and then make copies.

12 THE COURT: Very good. Okay.

13 MR. KUHN: Back at 1, is that the
14 idea?

15 THE COURT: Back at 1.

16 MR. KUHN: Okay, thank you.

17 THE COURT: If you just want to
18 make your copies --

19 MR. KUHN: Sounds great, thank
20 you.

21 - - - - -

22 (Thereupon, a luncheon recess was
23 taken at 12:07 p.m. with the
24 proceedings resuming at
25 1:05 p.m.)

1 - - - - -
2 AFTERNOON SESSION

3 THE COURT: With respect to the
4 jury instructions, does anybody have any
5 additions, corrections, changes that they
6 wish to make?

7 MR. BARR: No, Your Honor.

8 MR. KUHN: No, thank you, Judge.

9 THE COURT: And before we go get
10 the jurors, if you could just double-check
11 what we have up here to go back to the jury
12 so that way we know that only the things
13 that are supposed to go back are going
14 back, okay?

15 MS. SCHNELLINGER: I put three or
16 four over here.

17 (Thereupon, the jury reentered
18 the courtroom at 1:10 p.m.)

19 THE COURT: All right. Thank you,
20 you may be seated.

21 The parties having rested in this
22 matter, you've heard all of the evidence
23 that you are going to hear in this case.
24 At this time I am going to read to you the
25 instructions of law that apply to this

1 case. After that, you will have the
2 opportunity to hear the closing statements
3 by the parties, which will be followed by
4 my instructions with respect to your
5 deliberations in this matter.

6 You all have been provided a copy
7 of the jury instructions, they should have
8 all been on your chairs. If there
9 isn't -- if there is someone out there who
10 hasn't gotten a copy, just let us know and
11 we'll get you a copy.

12 Again, I have provided these
13 copies with you so you don't have to sit
14 here and listen to me. You can read along,
15 if you choose to. If you don't, that's
16 fine, too, okay?

17 Members of the Jury: You have
18 heard the evidence and the arguments of
19 counsel. It is now my duty to instruct you
20 on the law which applies in this case. The
21 Court and the jury have separate functions.
22 You decide the disputed facts and the Court
23 provides the instructions of law. It is
24 your sworn duty to accept these
25 instructions and to apply the law as it is

1 now given to you. You are not permitted to
2 change the law, nor to apply your own
3 conception of what you think the law should
4 be.

5 Indictment. This case began with
6 the filing of an indictment. The
7 indictment informed the Defendant that she
8 had been charged with certain offenses.
9 The fact that it was filed may not be
10 considered by you for any other purpose.
11 The plea of not guilty is a denial of the
12 charges and puts in issue all of the
13 essential elements of each offense.

14 Presumption of innocence. The
15 Defendant is presumed innocent until her
16 guilt has been established beyond a
17 reasonable doubt. The Defendant must be
18 acquitted unless the State produces
19 evidence which convinces you beyond a
20 reasonable doubt of every essential element
21 of the offenses charged in the indictment.

22 Reasonable doubt. Reasonable
23 doubt is present when, after you have
24 carefully considered and compared all the
25 evidence, you cannot say you are firmly

1 convinced of the truth of the charge.
2 Reasonable doubt is a doubt based on reason
3 and common sense. Reasonable doubt is not
4 mere possible doubt, because everything
5 relating to human affairs or depending on
6 moral evidence is open to some possible or
7 imaginary doubt. Proof beyond a reasonable
8 doubt is proof of such character that an
9 ordinary person would be willing to rely
10 and act upon it in the most important of
11 his or her own affairs.

12 If after a full and impartial
13 consideration of all the evidence, you are
14 firmly convinced of the truth of the
15 charge, the State has proved its case
16 beyond a reasonable doubt. If you are not
17 firmly convinced of the truth of the
18 charge, you must find the Defendant not
19 guilty of such charge.

20 Evidence. What is evidence?
21 Evidence is all the testimony received from
22 the witnesses, the exhibits admitted during
23 the trial, and any facts which the Court
24 requires you to accept as true.

25 Evidence may be direct or

1 circumstantial or both. Direct evidence is
2 the testimony given by a witness who has
3 seen or heard the facts to which he or she
4 testifies. It includes exhibits admitted
5 into evidence during the trial.

6 Circumstantial evidence is the
7 proof of facts or circumstances by direct
8 evidence from which you may reasonably
9 infer other related or connected facts,
10 which naturally and logically follow,
11 according to the experience of mankind.

12 To infer, or to make an inference,
13 is to reach a reasonable conclusion of fact
14 which you may, but are not required to,
15 make from other facts which you find have
16 been established by direct evidence.
17 Whether an inference is made rests entirely
18 with you.

19 Where the evidence is both direct
20 and circumstantial, the combination of the
21 two must satisfy you of the Defendant's
22 guilt beyond a reasonable doubt as to the
23 charge.

24 Direct evidence and circumstantial
25 evidence are of equal weight. The evidence

1 does not include the indictment, the
2 opening statements or closing arguments of
3 counsel. The opening statements and
4 closing arguments of counsel are designed
5 to assist you. They are not evidence.

6 Objections. Statements or answers
7 that the Court struck or which you were
8 instructed to disregard are not evidence
9 and must be treated as though you never
10 heard them.

11 You must not speculate as to why
12 the Court sustained the objection to any
13 question or what the answer to such
14 question might have been. You must not
15 draw any inference or speculate on the
16 truth of any suggestion included in a
17 question that was not answered.

18 Credibility. You are the sole
19 judges of the facts, the credibility of the
20 witnesses, and the weight of the evidence.

21 To weigh the evidence, you must
22 consider the credibility of the witnesses.
23 You will apply the tests of truthfulness,
24 which you apply in your daily lives.

25 These tests include: The

1 appearance of each witness upon the stand;
2 the witness's manner of testifying; the
3 reasonableness of the testimony; the
4 opportunity the witness had to see, to
5 hear, and to know the things concerning
6 which the witness testified; the witness's
7 accuracy of memory; the witness's
8 motivation, that is, what did a particular
9 witness have to gain or lose by testifying
10 as he or she did; the witness's frankness,
11 or lack of it; intelligence, interest, and
12 bias, if any, together with all the facts
13 and circumstances surrounding the
14 testimony. Applying these tests, you will
15 assign to the testimony of each witness
16 such weight as you deem proper.

17 You are not required to believe
18 the testimony of any witness simply because
19 he or she was under oath. You may believe
20 or disbelieve all or any part of the
21 testimony of any witness. It is your
22 province to determine what testimony is
23 worthy of belief, and what testimony is not
24 worthy of belief.

25 The testimony of one witness

1 believed by you is sufficient to prove any
2 fact. Also, a discrepancy in a witness's
3 testimony or between his or her testimony
4 and that of others, if there are any, does
5 not necessarily mean that you should
6 disbelieve the witness, since people
7 commonly forget facts or recollect them
8 erroneously after the passage of time. You
9 are all certainly aware of the fact that
10 two persons who are witnesses to an
11 incident may often see and hear things
12 differently. In considering a discrepancy
13 in a witness's testimony, you should
14 consider whether such discrepancy concerns
15 an important fact or a trivial one.

16 Testimony was introduced that a
17 witness was convicted of a criminal act.
18 This testimony may be considered for the
19 purpose of helping you test the credibility
20 or weight to give to his or her testimony.
21 It cannot be considered for any other
22 purpose.

23 It is not necessary that the
24 Defendant take the stand -- take the
25 witness stand in her own defense. She has

1 a constitutional right not to testify. The
2 fact that the Defendant did not testify
3 must not be considered for any purpose.

4 Expert witness. A certain witness
5 testified as an expert and gave an opinion.
6 Normally, a witness may not express an
7 opinion. However, a person who follows a
8 profession or special line of work may
9 express an opinion because of his or her
10 education, knowledge, and experience in
11 that particular field. That testimony is
12 admitted for whatever assistance it may
13 provide to help you to arrive at a just
14 verdict.

15 Questions have been asked in which
16 the expert witness was permitted to assume
17 that certain facts were true and to give an
18 opinion based upon that assumption. You
19 must decide whether the assumed facts on
20 which the expert based his or her opinion
21 are true. If any assumed fact was not
22 established by the greater weight of the
23 evidence, you will decide the effect of
24 that failure on the value of the opinion of
25 the expert.

1 Questions have also been asked of
2 the expert witness after he or she had
3 disclosed the underlying facts or data. It
4 is for you, the jury, to decide if such
5 facts or data on which he or she based his
6 or her opinion are true, and you will
7 decide the weight to give such evidence.

8 As with other witnesses, upon you
9 alone rests the duty of deciding what
10 weight should be given to the testimony of
11 the expert witness. In determining that
12 weight, you should take into consideration
13 the expert's skill, experience, veracity,
14 and knowledge of the facts of this case.
15 Also apply the usual rules for testing
16 credibility and determine the weight to be
17 given to that testimony.

18 Charges. Count One, Aggravated
19 Arson, Revised Code Section 2909.02(A)(2).

20 The Defendant is charged with
21 Aggravated Arson. Before you can find the
22 Defendant guilty, you must find beyond a
23 reasonable doubt that on or about the 3rd
24 day of October, 2012, in Stark County,
25 Ohio, Kayla Jean Ayers, by means of fire or

1 explosion, knowingly caused physical harm
2 to 185 26th Street Southeast, Massillon,
3 Ohio, an occupied structure.

4 Definitions:

5 Time: That the offense charged
6 took place on or about the 3rd day of
7 October, 2012. It is not necessary that
8 the State prove that the offense was
9 committed on the exact day as charged in
10 the indictment. It is sufficient to prove
11 that the offense took place on a date
12 reasonably near the date claimed.

13 Venue: That the offense charged
14 took place in Stark County, Ohio. The
15 right of this Court to try the Defendant
16 depends upon proof that the offense was
17 committed in this county.

18 Knowingly: A person acts
19 knowingly, regardless of her purpose, when
20 she is aware that her conduct will probably
21 cause a certain result or she is aware that
22 her conduct will probably be of a certain
23 nature. A person has knowledge of
24 circumstances when she is aware that such
25 circumstances probably exist.

1 Since you cannot look into the
2 mind of another, knowledge is determined
3 from all the facts and circumstances in
4 evidence. You will determine from these
5 facts and circumstances whether there
6 existed at the time in the mind of the
7 Defendant an awareness of the probability
8 that she was causing physical harm to 185
9 26th Street Southeast, Massillon, Ohio, an
10 occupied structure.

11 Cause: The State charges that the
12 act or failure to act of the Defendant
13 caused physical harm to property. Cause is
14 an essential element of the offense. Cause
15 is an act or failure to act which in a
16 natural and continuous sequence directly
17 produces the physical harm to the property,
18 and without which it would not have
19 occurred.

20 The Defendant's responsibility is
21 not limited to the immediate or most
22 obvious result of the Defendant's act or
23 failure to act. The Defendant is also
24 responsible for the natural and foreseeable
25 consequences or results that follow, in the

1 ordinary course of events, from the act or
2 failure to act.

3 Physical harm to property:

4 Physical harm to property means any
5 tangible or intangible damage to property
6 that, in any degree, results in loss to its
7 value or interferes with its use or
8 enjoyment. Physical harm to property does
9 not include wear and tear occasioned by
10 normal use.

11 Occupied structure: Occupied
12 structure means any house, building,
13 outbuilding, watercraft, aircraft, railroad
14 car, truck, trailer, tent, or other
15 structure, vehicle, or shelter, or any
16 portion thereof, which at the time is
17 occupied as the permanent or temporary
18 habitation of any person, whether or not
19 any person is actually present.

20 Count two, Endangering Children,
21 Revised Code Section 2919.22(A).

22 The Defendant is charged with
23 Endangering Children. Before you can find
24 the Defendant guilty, you must find beyond
25 a reasonable doubt that on or about the 3rd

1 day of October, 2012, in Stark County,
2 Ohio, Kayla Jean Ayers, being the parent of
3 three children under eighteen years of age,
4 created a substantial risk to the health or
5 safety of such children by violating a duty
6 of care, protection, or support.

7 Definitions:

8 Time: That the offense charged
9 took place on or about the 3rd day of
10 October, 2012. It is not necessary that
11 the State prove that the offense was
12 committed on the exact day as charged in
13 the indictment. It is sufficient to prove
14 that the offense took place on a date
15 reasonably near the date claimed.

16 Venue: That the offense charged
17 took place in Stark County, Ohio. The
18 right of this Court to try the Defendant
19 depends upon proof that the offense was
20 committed in this county.

21 Recklessly: A person acts
22 recklessly when, with heedless indifference
23 to the consequences, she perversely
24 disregards a known risk that her conduct is
25 likely to cause a certain result or be of a

1 certain nature. A person is reckless with
2 respect to circumstances when, with
3 heedless indifference to the consequences,
4 she perversely disregards a known risk that
5 such circumstances are likely to exist.

6 Risk: Risk means a significant
7 possibility, as contrasted with a remote
8 possibility, that a certain result may
9 occur or that certain circumstances may
10 exist.

11 Child: Child means a person under
12 eighteen years of age, or a mentally or
13 physically handicapped person under
14 twenty-one years of age.

15 Substantial risk: Substantial
16 risk means a strong possibility as
17 contrasted with a remote or even a
18 significant possibility, that a certain
19 result may occur or that certain
20 circumstances may exist.

21 Conclusion. If you find that the
22 State proved beyond a reasonable doubt all
23 the essential elements of any one or both
24 of the offenses charged in the separate
25 counts of the indictment, your verdict must

1 be guilty as to such offense or offenses
2 according to your findings.

3 Not guilty: If you find that the
4 State failed to prove beyond a reasonable
5 doubt any one of the essential elements
6 or -- of any one or both of the offenses
7 charged in the separate counts in the
8 indictment, your verdict must be not guilty
9 as to such offense or offenses according to
10 your findings.

11 Consider counts separately. The
12 charges set forth in each count in the
13 indictment will constitute a separate and
14 distinct matter. You must consider each
15 count and the evidence applicable to each
16 count separately and you must state your
17 findings as to each count uninfluenced by
18 your verdict as to the other counts. The
19 Defendant may be found guilty or not guilty
20 of any one or all of the offenses charged.

21 Punishment and sympathy. You may
22 not discuss or consider the subject of
23 punishment. Your duty is confined to the
24 determination of whether the Defendant is
25 guilty or not guilty. In the event you

1 find the Defendant guilty, the duty to
2 determine the punishment is placed, by law,
3 upon the Court.

4 You must not be influenced by any
5 consideration of sympathy or prejudice. It
6 is your duty to carefully weigh the
7 evidence, to decide all disputed questions
8 of fact, to apply the instructions of the
9 Court to -- to apply the instructions of
10 the Court to your findings, and to render
11 your verdict accordingly. In fulfilling
12 your duty, your efforts must be to arrive
13 at a just verdict. Consider all the
14 evidence and make your findings with
15 intelligence and impartiality, and without
16 bias, sympathy or prejudice, so that the
17 State of Ohio and the Defendant will feel
18 that their case was fairly and impartially
19 tried. If, during the course of the trial,
20 the Court said or did anything that you
21 consider an indication of the Court's view
22 on the facts, you are instructed to
23 disregard it.

24 At this time you're going to hear
25 the closing arguments of counsel, with the

1 State of Ohio going first, proceeded by
2 counsel for the Defendant. And then the
3 counsel for the Plaintiff, the State of
4 Ohio, will have the opportunity to
5 readdress you one more time to make a
6 rebuttal argument.

7 At this time, Attorney
8 Schnellinger, you may give your closing
9 argument.

10 MS. SCHNELLINGER: Thank you, Your
11 Honor. Your Honor, I would like to reserve
12 the ten minute rebuttal time.

13 THE COURT: Yes.

14 MS. SCHNELLINGER: Your Honor,
15 counsel. Ladies and gentlemen of the jury,
16 thank you for your time and attention thus
17 far. What I would like to do is break down
18 the charges before you, the elements, and
19 then the facts that support those elements.

20 Let's start with the easy part,
21 the date and the venue. There's been no
22 question that it was October 3rd, 2012, no
23 question this happened at 185 26th Street
24 Southeast, Massillon, Stark County, Ohio.

25 Let's move on specifically to

1 Aggravated Arson. Defendant knowingly
2 caused physical harm to property, an
3 occupied structure, by means of fire or
4 explosion. No question there was fire. No
5 question there was physical harm. The
6 pictures show you the physical harm. You
7 can see the damage to the beams, you can
8 see the damage to the wall, you saw the
9 damage to the ceiling.

10 The house doesn't have to be
11 burned to the ground, doesn't have to be
12 anywhere close to physical harm. The
13 damage to the beams, damage to the ceiling,
14 physical harm.

15 Occupied structure. It's a
16 habitation. Jeff Ayers lived there with
17 his family, the Defendant lived there with
18 her family. It's an occupied structure.

19 The main question for the
20 Aggravated Arson is who started the fire.
21 But before we go to who, let's go to the
22 second count. Again, date and location are
23 the same. Recklessly, her Honor told you,
24 with heedless indifference to the
25 consequences. Being a parent, guardian,

1 custodian of three children under eighteen,
2 a substantial risk to the health or safety
3 by violating a duty of care, protection, or
4 support.

5 No question the Defendant is a
6 parent to three children. Bubba who was in
7 the home at the time of this fire, the
8 three children that were -- or two children
9 that were returning home. But most
10 importantly, that child that was in that
11 house when that fire was lit.

12 Duty of care. Common sense, as a
13 parent you have a duty of care to protect
14 your children from harm. Either by
15 lighting the fire, letting that child stay
16 in the house, letting that child stay in
17 the house for ten minutes or more, it's
18 violating a duty of care.

19 Let's go back to who. Approach
20 this like Inspector Winters, the arson
21 investigator, approached this. Talked
22 about the cause and origin of this fire.
23 The origin, the mattress, started on a
24 mattress. And Inspector Winters explained
25 where on this mattress. There are two

1 separate and distinct points of origin.
2 I'll point those out to you again. This
3 one right here (Indicating). And then you
4 have a second one right there (Indicating).
5 Two separate and distinct points.

6 We have the origin, let's move on
7 to cause. Inspector Winters, an expert in
8 arson investigations, described his
9 methods, what he ruled out. What did he
10 rule out? He ruled out electrical. He
11 ruled out any accelerants. Why? Because
12 there's evidence that neither one of those
13 started the fire. He ruled out accidental.

14 He explored all the possibilities,
15 and he specifically looked at whether or
16 not a cigarette could have started this.
17 Why did he look at that? Well, he saw the
18 cigarette and the ashtray on the nightstand
19 in that room so he specifically went above
20 and beyond and looked at that as an option.

21 He explained that a cigarette that
22 had been left burning on a mattress, there
23 would still be remnants, would still be
24 there, he still could have found it. He
25 found nothing.

1 I'll also remind you that common
2 sense, your common sense, doesn't fly out
3 the window when you walk in this courtroom.
4 If you fall asleep and you drop a cigarette
5 on a mattress, it starts a fire, right?
6 It's common sense. It doesn't jump and
7 start another fire, it's not possible.

8 There are two separate and
9 distinct origins here according to the
10 expert, according to the pictures. Fire
11 doesn't jump like that.

12 So everything was ruled out except
13 incendiary, and that was to a reasonable
14 degree of scientific certainty. So we
15 ruled out all the other causes. The only
16 remaining cause is an open flame; match,
17 lighter, a torch.

18 Let's move on to individuals. We
19 can rule out a lot of individuals. In
20 fact, we can rule out all but one. Jeff
21 Ayers, they were gone. Everyone says they
22 were gone. They're in West Virginia when
23 they find out about the fire.

24 Brennan Scott, he was gone. The
25 last time he was at that house was around

1 5:30. Who says that? Brennan said that,
2 Jennifer Conley says that, the Defendant
3 said that.

4 The other children, gone on the
5 bus, went to church.

6 The only ones there? The
7 Defendant and Bubba, the three-year-old
8 son. And that three-year-old son was
9 upstairs when that fire started. There is
10 no physical evidence placing him at that
11 fire, none. Defendant herself said, I had
12 to go upstairs to find my son.

13 Now, Defendant told a lot of
14 stories. Why is this more credible than
15 the other ones? She didn't have time to
16 manufacture it. Captain Annen on the stand
17 said, I asked how you cut your hand.
18 That's what she said -- he said, I asked
19 the Defendant how she cut her hand. She
20 said, I cut my hand when I was running
21 upstairs to find my son.

22 Now, remember, the Defendant had
23 evidence of being around fire. She had
24 soot, she had soot in her nose. Brennan
25 had nothing -- Bubba had nothing. No

1 evidence he was exposed to fire, no
2 evidence he was exposed to smoke, he had no
3 smoke inhalation, he was not under any kind
4 of distress whatsoever. But we know he was
5 in a burning house for ten minutes. We
6 know that he was at substantial risk to his
7 health and safety. We know that.

8 Inspector Winters talked to Bubba,
9 examined him at the scene. And he kept
10 investigating, looking for the person that
11 started that fire. What does that tell
12 you?

13 And, again, common sense. You
14 believe that first story that the Defendant
15 said, "Bubba started the fire," he would
16 have to hold a lighter like you remember
17 Inspector Winters demonstrating how he had
18 to hold that lighter? He had to hold the
19 lighter, ignite the mattress, then go and
20 start a second fire, the whole time no
21 soot, no smoke, not getting burned?
22 Impossible. They all told you, the
23 firefighters told you, he would have
24 something on him because if he was exposed
25 to that fire, that smoke, he would have

1 something on him. He had nothing. Because
2 remember when -- he has to start that
3 second fire, the first point of origin is
4 burning.

5 Only one person points the finger
6 at the three-year-old little boy, and
7 that's the Defendant. One person. No
8 other evidence supports that. In fact, all
9 the evidence supports Bubba was nowhere
10 near it.

11 And why would a mother accuse her
12 three-year-old son of starting a fire? She
13 knows he's not going to get in trouble,
14 he's three. Place the blame on him, he's
15 three.

16 Now many people repeated those
17 words, "Bubba started the fire," but all
18 that origin -- all that came from was the
19 Defendant. But if you recall, she only
20 said Bubba started the fire on the night of
21 the fire. When she learned that didn't
22 make sense, the evidence didn't support
23 that, she changed her story; didn't she?
24 Bubba started the fire. Then she learned,
25 yeah, that's not going to work, I assume

1 Bubba started the fire. Then she said,
2 Well, I don't have anything to support
3 that.

4 What did she switch to? I fell
5 asleep. Accidental. Evidence supports the
6 exact opposite of that. Well, then what
7 did she go to? My boyfriend, Brennan,
8 started the fire, or my dad started the
9 fire.

10 Only one person remains that could
11 have started this fire, and that's the
12 Defendant. She was present at the fire,
13 she's the only person that had any physical
14 evidence about being around the fire; soot
15 in her nose, soot on her person. Only one.

16 We need to talk about the behavior
17 and the lies told by the Defendant. She's
18 a self-proclaimed fanatical Baptist, she
19 doesn't go to church the day of the fire.
20 The day of the fire was a Wednesday, she
21 didn't go to church. Doesn't answer the
22 door when Karen comes to get her. Clearly
23 a planned arrangement, doesn't answer the
24 door.

25 You heard on the tape, well, she

1 didn't go to church that night because
2 those other kids were there, the boss's
3 kids were there. Well, she doesn't answer
4 the door and tell Karen, I can't go to
5 church, I'm sorry, I got these other kids
6 there. She doesn't answer the door. Why
7 doesn't she say that that day? Because
8 those kids were not there. Jennifer Conley
9 and Brennan both said those kids were gone
10 by the time the church bus got there.
11 Karen arrived after the church bus. Can't
12 say that.

13 What she said on the taped
14 statement, complete and total fabrication
15 because the kids were gone by the time she
16 was supposed to go to church. And they
17 were gone for at least an hour.

18 She could have easily gone to
19 church that night. Why didn't she? Well,
20 she was going to start that fire that
21 night.

22 Let's talk about her blaming
23 everybody else. We already talked about
24 Bubba. Let's talk about what she says
25 originally. She says, I'm at the dryer,

1 I'm doing laundry, Bubba's over by the
2 mattress, I turn around and I see the fire
3 and I see him standing there. This is the
4 picture taken if you're standing at the
5 dryer. You cannot see that mattress that
6 burned. It's impossible.

7 And she agreed -- if you listen to
8 the taped statement, she agrees, oh, you're
9 right, I can't see that. So what does she
10 do? Well, I assume that Bubba started the
11 fire. Based on what? Nothing.

12 Well, then when that gets flushed
13 out a little bit, then she says, I fell
14 asleep. Inspector Winters explained to you
15 how that's impossible. Then she moves on
16 to Brennan or her father. Neither one of
17 them were there during this time period the
18 fire was started.

19 Why the multiple stories? Got to
20 blame someone; don't you? You have to
21 shift the blame to someone else. If you're
22 guilty, got to point your finger at
23 somebody else. But the truth doesn't have
24 different versions and the truth doesn't
25 get confused, and the truth doesn't blame

1 innocent people.

2 And let's not forget what she
3 promised her father, what she threatened
4 her father, If you leave me, I'll burn this
5 house down. I believe she said, I'll burn
6 this mother fucking house down. The father
7 was leaving, that day he went to West
8 Virginia, the day of the fire.

9 Now this is not like when you say,
10 Oh, my God, I'm going to kill you. Or, I'm
11 going to kick your butt. Those things
12 don't happen. It's not the same thing.
13 This was a specific threat. And this
14 wasn't, Dad, if you leave me, I will never
15 talk to you again. Or, Dad, if you leave
16 me, you will never see your grandchildren
17 again. This is, she threatens to burn the
18 house down and she tries to do it.
19 Completely different. I make a threat and
20 I follow through.

21 Her statement concerned her
22 father, her own father, so much, it scared
23 him. He told you that. He's going to
24 leave his own house.

25 And then you have Karen Ball.

1 Karen Ball had such an uneasy feeling that
2 night when she went to pick up the
3 Defendant that she left church and went
4 back to the house. Karen wasn't supposed
5 to be there, was she? She wasn't expected
6 there, she wasn't supposed to be there.
7 You heard how much contact she had with the
8 Defendant. She was supposed to pick her
9 up, take her to church that day. She
10 wasn't supposed to come back. She's the
11 only reason the fire department was called,
12 she's the reason the Defendant left the
13 house with the three-year-old because thank
14 God Karen came back.

15 But remember Karen had to knock on
16 doors and call for Kayla for ten minutes.
17 Ten minutes the Defendant stayed in that
18 house that was burning. How do we know it
19 was burning? Because when Karen came down
20 the street, she could see that it was
21 burning. The house was on fire.

22 Kayla said at some point, I
23 grabbed my son and I ran out. She didn't
24 run out the closest exit, did she? No, she
25 went upstairs and eventually exits out the

1 kitchen door which is not the closest exit
2 if you're leaving the basement.

3 We know she's upstairs. What is
4 she doing? Blood everywhere, a pool of
5 blood on the table. Why didn't she exit
6 that first door?

7 Again, the truth doesn't have
8 versions, it doesn't. The Defendant is the
9 only one who threatened to burn that house
10 down. The Defendant is the only one with
11 the opportunity. She's the only one with
12 the ability to start this fire. She's the
13 only one in that basement.

14 Two other things I would like to
15 point out to you. One, the Aggravated
16 Arson is a knowingly act. Her Honor
17 defined that for you, being aware that your
18 conduct may cause a certain -- will
19 probably cause a certain result. I'll
20 point out to you the two separate points of
21 origin. The knowingly act, it's not an
22 accident.

23 The Endangering Children is a
24 reckless standard, it's different. She
25 doesn't have to knowingly endanger her

1 children, she just has to have indifference
2 to that fact. So I want to point out the
3 difference.

4 The other important thing I want
5 to point out to you is when you consider
6 the credibility of the witnesses that were
7 on the stand, what was their motive to lie
8 to you, to be dishonest to you? I submit
9 to you, there is none. Karen and Jennifer,
10 what do they have to gain? Jeff, you saw
11 him on the stand, he did not want to tell
12 you those ugly threats that his daughter
13 made to him, he didn't. He wept. He
14 didn't want to tell you those things.
15 Jason had everything to lose because he's
16 exposed in open court he's having an affair
17 on his wife, or had an affair on his wife
18 who didn't know. And he tells you, I still
19 care about her, but he came here.

20 What does the Defendant have to
21 gain? Everything. Talk about
22 corroboration, State's witnesses, all of
23 them, they corroborated each other. They
24 didn't conflict. You listen to Brennan,
25 you listen to Jennifer, you listen to

1 Karen, consistent. Defendant's own
2 statements are not even consistent with
3 themselves. You can judge their
4 credibility on that.

5 I'm going to ask you to review the
6 testimony, the evidence, the law, and
7 follow your oath that was given to you, and
8 come back with a finding of guilty of one
9 count of Aggravated Arson and one count of
10 Endangering Children. Thank you.

11 THE COURT: Thank you.

12 Mr. Kuhn, at this time you may
13 give your closing argument.

14 MR. KUHN: Thank you, Judge.

15 Opposing counsel. Ladies and
16 gentlemen of the jury, thank you for
17 bearing with us. It's been sort of a long
18 process here, and we do appreciate that.
19 I'll try not to take too much time, but I
20 do view this as being a very important part
21 of the process where I get to review some
22 things that I think were important through
23 the testimony that we heard and some of the
24 different exhibits that the State of Ohio
25 has shown us.

1 And the State of Ohio cannot prove
2 their case here today. They cannot prove,
3 they have not proven, that Kayla Ayers
4 acted knowingly when this fire happened at
5 her residence. Sometimes an accident is
6 just an accident. And it is very
7 unfortunate -- I think it's a miracle that
8 no one was hurt aside from Kayla, Kayla was
9 the only person injured. And I think the
10 arson investigator has a job where he
11 needs, every once in a while, to find an
12 arson. If he never finds an arson, there
13 is no need to have an arson investigator.
14 So he's got to round up an arsonist every
15 once in a while.

16 I think he told us in the five
17 years he's been in Massillon, he's
18 investigated about 30 suspected arson
19 cases. Every couple of months he
20 investigates one.

21 There is no way to know exactly
22 what happened the night of the fire, okay?
23 We've seen the photos. There was a fire,
24 that's obvious. How it started, we cannot
25 tell. The arson investigator, Mr. Winters,

1 told us it was his opinion of what may have
2 happened. It was his opinion that there
3 are two points where a fire started. He
4 even was able to tell us which one started
5 first. Think about whether you can
6 wholeheartedly believe that, or was that
7 just something we cannot know. Think about
8 these things when you're deliberating.

9 I'd like to take you through some
10 of the other testimony we've heard. I
11 think the first witness we heard from was
12 Captain Annen. Seemed like a nice enough
13 fellow. And actually that's something else
14 I would like to comment on, these folks
15 weren't lying when they came in here.

16 Mr. Winters wasn't lying, it is
17 his opinion. Okay, I'm not saying he's a
18 liar when he comes in and says that's his
19 opinion, but it's not absolutely certain.
20 Okay, if it was, we wouldn't have a jury,
21 we wouldn't -- he would be the ultimate
22 authority on whether an arson has been
23 committed or not. There would be no
24 criminal justice system, it would just be
25 Reggie Winters, arson decider, that would

1 be the end of it, okay.

2 Captain Annen, he comes in here,
3 he doesn't lie to us. What he told us, he
4 thought he recalled Kayla slipped running
5 up the stairs. When I cross-examined him,
6 I said, Isn't it possible she told you she
7 slipped in the basement and cut her hand on
8 the glass? He said, Yeah, that is
9 possible. Okay, he's not lying about any
10 of that.

11 He said he didn't observe any gas
12 cans, lighter fluid, anything incriminating
13 laying about, things you might expect to
14 find at the scene of an arson, okay?

15 I think next we had Firefighter
16 Canfora. Again, seemed like a pleasant
17 fellow. He said he's just a firefighter,
18 he doesn't do the investigating. I asked
19 him if he had seen anything suspicious
20 laying around. No, didn't see anything. I
21 think I asked him if he had seen any smoke
22 detectors. He didn't recall. He said
23 they're instructed not to disturb the
24 scene. So if there was something laying
25 around, Investigator Winters would have

1 spotted it at that time.

2 Then we had Officer Ricker from
3 the Massillon Police Department. Once
4 again, seemed like a pretty nice guy. He
5 wasn't lying to us either. We saw the very
6 long, somewhat tedious, video. I was about
7 ready to confess that I had started the
8 fire just to end the video.

9 MR. BARR: Objection to what Mr.
10 Kuhn was ready to do, Your Honor.

11 THE COURT: Sustained.

12 MR. KUHN: We watched the video,
13 okay? In the video, Officer Ricker says,
14 Kayla, I don't believe you purposely set
15 this fire, I think it was a result of being
16 careless. I asked him right over there, I
17 asked him, I said, Sir, were you lying in
18 the video when you say that? He said, No,
19 I wasn't.

20 This was an accident. Very
21 unfortunate, but it was not purposely set,
22 it was not knowingly set, it was not
23 aggravated arson, okay?

24 Firefighter Canfora also indicated
25 that when we entered the basement, there

1 were no light fixtures that he noticed.
2 There were no lights on. I think they
3 indicated it was nighttime, it was dark
4 out, probably smoky as well. I asked him
5 if he had a mask on. How could he see, did
6 he have a flashlight on his helmet? He
7 said he had a flashlight attached to his
8 coat, but really the light was coming from
9 the fire. Okay, so somehow when he entered
10 the basement, he could see the glow of the
11 fire, okay? But yet when Kayla, in the
12 video, indicated that somehow she turned
13 and noticed the fire, we're to believe that
14 that's impossible. Couldn't happen because
15 as we can see in the picture here, the
16 furnace is in the way, the furnace and the
17 water tank, okay? But somehow the
18 firefighters could locate it, they could
19 see the glow, that's not weird.

20 Throughout the video we watched,
21 Kayla's story doesn't change. The story
22 is, I didn't do this. That's the story, I
23 did not do this. That does not change.
24 She says, I did not purposely set the house
25 on fire. She believed Bubba did. Okay.

1 After, what was it, an hour or so, okay,
2 you know, I guess it's possible maybe I did
3 fall asleep. You know, I guess if you
4 think that's more likely, okay, you know,
5 maybe I'm mistaken here, maybe I was
6 careless.

7 Officer Winters, Inspector
8 Winters, comes in. He said he was on the
9 scene almost immediately after the fire.
10 He did his thorough inspection. He even
11 went to the hospital to meet up with Kayla
12 at the hospital to talk to her. The story
13 is the same thing, fire started don't know
14 how, getting water out of the washing
15 machine, running over, dumping it, running
16 back, slip, fall, cut hand. It's the same
17 story. It's the story she tells the
18 neighbor, it's the story she tells the
19 church lady, it's the story she tells
20 Officer Muntean, Mr. Winters, Mr. Ricker.
21 It's the same story every time, it doesn't
22 change.

23 Inspector Winters talked to Kayla
24 he said 40 minutes after she was
25 transported to the hospital. He didn't

1 report smelling any marijuana, he didn't
2 report any alcohol smell. Neither did
3 Officer Ricker, neither did any of the
4 firefighters we heard from.

5 Nobody recalled seeing any
6 gasoline cans laying around. Nobody
7 reported seeing any empty lighter fluid
8 jugs. Nobody really even reported seeing
9 any lighters laying around, okay?

10 But when I asked Investigator
11 Winters about whether Bubba could, in fact,
12 use a lighter, was he familiar with them or
13 is he too little? He held his hands up and
14 went like this (Indicating) and indicated
15 that Bubba did, in fact, light the lighter
16 and he did know what they were, okay?

17 We then asked the neighbor lady,
18 Jennifer, again, seems like a very nice,
19 helpful lady, Is Bubba familiar with the
20 lighter? Yes, he is. Have you seen Bubba
21 holding a lighter? Yes, I have. When he
22 sees one, he picks it up and carries it to
23 me.

24 Quite a bit was made of the amount
25 of soot that was not found on Bubba, but

1 that was found on Kayla, okay? Captain
2 Annen seemed to think that it might be a
3 little bit weird that Bubba did not have
4 substantial soot on him. Whoever would
5 have set this fire would have had
6 substantial soot on them. Kayla didn't
7 have that. Investigator Winters checked
8 her out, he checked her arms and her hands,
9 no soot at all. Checked her nostrils,
10 light soot. Oh, yeah, she was in the fire,
11 I would think there would be some soot in
12 there.

13 We heard a couple jail calls,
14 okay? In those conversations, I think we
15 were led to believe that some marijuana
16 substitute, K2 or spice, or something, was
17 involved. We just heard that tiny little
18 snippet, okay? There was no context to it.
19 The -- Miss Conley testified about whether
20 that was Kayla's voice, she didn't say the
21 context of that little sentence, that
22 phrase. It didn't say, yeah, this happened
23 in association with the fire that occurred,
24 it didn't say this happened five years ago,
25 it didn't happen two days ago. There was

1 no context for it.

2 I guess that was presented to us
3 so that sometime in Kayla's lifetime we
4 would be aware that maybe she tried a
5 marijuana alternative, but there was no
6 context.

7 There were no accelerants found.
8 Okay. I think Investigator Winters said
9 that he believed the bed had been burning
10 for 10 to 12 minutes. That sounds
11 plausible, that sounds like maybe the
12 amount of time it would take somebody to
13 notice a fire, run outside, call the fire
14 department, the fire department comes and
15 extinguishes it. That doesn't sound out of
16 the ordinary.

17 We heard from Brennan Scott, the
18 father of Kayla's children. He wasn't
19 there, he was playing video games at his
20 boss's house. Wasn't there, doesn't know
21 what happened.

22 We heard from Kayla's father who
23 was really the renter of the home. Again,
24 seemed like a decent guy, he wasn't there.
25 He was returning from a trip to West

1 Virginia, he doesn't know what happened.
2 He looked around the house, there were no
3 gas cans there.

4 I asked him about the smoke
5 detectors. No, I purposely -- I try to
6 live my life without smoke detectors, okay?
7 No smoke detectors in the house. Landlord
8 apparently told Mr. Winters there had been
9 smoke detectors. Mr. Ayers says, no, you
10 know, that's not how it was, there never
11 were any, I'm aware of that, I prefer it
12 that way. I have the small children in the
13 house, still don't want any smoke
14 detectors.

15 We heard from Jennifer Conley, the
16 neighbor. She said that she smelled
17 something, it smelled burnt. A burnt smell
18 coming from Kayla's breath. Could it have
19 been the mattress fire? No, no, no. I
20 know what a mattress fire smells like,
21 couldn't have been that. She told us that
22 she had seen Bubba with a lighter before,
23 she knows it's possible.

24 Then we heard from the church
25 lady, Karen Ball. Again, seemed like a

1 real nice lady. She seemed surprised by
2 the fact that somebody would hide from her
3 when she comes to pay them a visit. Okay.
4 Some people might hide from, like, the
5 Jehovah's Witnesses when they're coming
6 around door-to-door, maybe kind of a
7 similar situation. I'm just not in the
8 mood to deal with the church lady right
9 now.

10 She didn't detect any marijuana
11 smell. She didn't see any gas cans laying
12 around. Kayla didn't smell like gasoline.
13 She said, well, Kayla wasn't -- wasn't too
14 with it. Maybe she was confused where the
15 girls are. Kayla, where are your
16 daughters? What do you mean? Her
17 daughters were at church, that's where the
18 church lady was supposed to be at, how does
19 she not know this? How -- how does the
20 church lady not know her daughters are at
21 church? It sounds a little bit confusing.
22 It's not a strange response.

23 I talked during voir dire and the
24 opening about how there's an element
25 missing here, there's an ingredient missing

1 here. And with regard to the aggravated
2 arson, that ingredient or element is
3 knowingly. The State of Ohio had a very
4 high burden to meet. They have not
5 successfully met that burden. They cannot
6 prove Kayla knowingly committed the act of
7 aggravated arson. They can show you all
8 the pictures in the world, they can bring
9 in all the phone calls in the world, they
10 can bring in all the inspectors in the
11 world, it's not going to change the fact
12 that they cannot prove that she knowingly
13 set that fire.

14 There are two plausible
15 alternative explanations; Bubba did it,
16 fell asleep with the cigarette. Careless?
17 Sure. Reckless? Perhaps. Knowingly?
18 Nope. Can't prove it.

19 We heard about the bloody
20 handprint. I'm not sure what that was
21 supposed to show us. I guess that she took
22 sort of a poor route when exiting the home,
23 touched a few things, dribbled her blood
24 all over the place. There's pets in there,
25 when she got out, she was concerned about

1 her children and dogs and the cat.

2 During voir dire, I talked a lot
3 about the guilt-o-meter, how it would start
4 at zero and maybe creep up depending on
5 what we've seen and heard the last two
6 days. And in order for you to reach a
7 guilty verdict for aggravated arson, that
8 guilt-o-meter has to creep all the way up
9 to guilt to proof beyond a reasonable
10 doubt. It has not crept up that far. It
11 may have crept up some.

12 Officer Ricker wasn't even
13 convinced. Investigator Winters said it
14 was his opinion that the manual that he
15 uses uses levels of scientific certainty,
16 not exact certainty, not complete proof.

17 This is a situation where an
18 accident is just an accident. Unfortunate
19 though it may be, it sounds like the
20 firefighters did some great work, maybe
21 saved a couple pets, helped saved the
22 structure. It sounds great. And I
23 certainly wouldn't mean to imply that
24 they're lying to us because they're not.
25 This isn't an arson case. Thank you.

1 THE COURT: Thank you, Attorney
2 Kuhn.

3 Attorney Barr, at this time you
4 have ten minutes for your rebuttal
5 argument.

6 MR. BARR: Thank you, Your Honor.

7 We have a criminal justice system
8 because criminals, even ones whose guilt
9 have been overwhelmingly proven to you,
10 like Kayla Ayers, don't always admit that
11 guilt. And this system requires experts,
12 like Mr. Winters, who have to come in here
13 and give you your opinion -- their opinion
14 so that you can make decisions beyond a
15 reasonable doubt.

16 And to stand up here and to say
17 that Mr. Winters needs to find an arson
18 every once in a while to keep his job is
19 like saying every once in a while a cop has
20 to find somebody to commit a murder. It's
21 ridiculous. And then he wants to backtrack
22 on that and say, well, I don't want to call
23 him a liar. But that's what he's doing.
24 He's saying that Mr. Winters came in here
25 and lied to you when he showed you the

1 physical evidence, when he showed you the
2 two points of origin where that fire
3 started.

4 There's one right there. And
5 there's the second one right there. But,
6 wait, oh, it's an accident. An accident
7 that started twice. So she must have been
8 smoking two cigarettes, one for each hand,
9 and then threw one on this side of the bed
10 and one on this side of the bed, when that
11 becomes her part of the story.

12 Captain Annen said she slipped
13 going upstairs to get her child. It's not
14 important about whether she said she
15 slipped on the basement or on the steps.
16 What's important is she said she slipped
17 upstairs to get her child. But Bubba was
18 downstairs, remember? Because Bubba
19 started the fire, at least that's what
20 Kayla Ayers tells you that night, her first
21 story.

22 And, by the way, you ain't going
23 to hear -- you have those instructions,
24 read them. Read through every single word,
25 you will not hear the word purpose

1 anywhere. Purpose isn't a part of this
2 trial. This trial is about, does somebody
3 know when they take a lighter and ignite
4 two spots on a bed, are they aware that
5 it's going to cause a fire and cause
6 physical harm. That's all this is about.
7 You won't even see the word purpose in
8 those instructions.

9 And Bubba, Bubba with his lighter,
10 trying to light it like that. But what did
11 Jennifer tell you? When those kids were in
12 my house for ten days and they found a
13 lighter, the two girls brought me the
14 lighter, and then Bubba went over and tried
15 to light the mattress? No, she didn't say
16 that. She said all three of those kids, if
17 they found a lighter, they brought it to
18 me. They didn't try to light it, they
19 didn't try to set the house on fire like
20 Kayla did.

21 And maybe you all do hide from
22 Jehovah's Witnesses, but I'll bet you don't
23 hide from people who you make plans with to
24 come over to pick you up to go to church on
25 Wednesday night. You don't hide from them

1 because you know they're coming, and those
2 plans included the two girls. Karen Ball
3 didn't know those girls were on that bus so
4 her concern was, I was supposed to pick all
5 of them up. I see Bubba, I see Kayla, I
6 don't see the other girls, where are they?
7 Some of you probably go to church, you know
8 that the kids go off to one wing of the
9 building and we all go to the other.

10 Firefighter Canfora said they went
11 down and they moved around before they saw
12 that glow. She's got x-ray vision, though,
13 she didn't have to move and see that fire.
14 In her other story, she could stand right
15 there at the washer and look right through
16 that cement beam and that furnace, and
17 everything else, and see that glow because
18 that's the picture that's standing -- when
19 you're standing at the washer looking at
20 where that fire was.

21 But, that's right, her story
22 didn't change, it never changed, because
23 first it was Bubba that night, Bubba
24 started it, and then she comes in the next
25 morning and then she says, well, I assume

1 Bubba started it because when I could see
2 through all this stuff here and I could see
3 that red glow, then I saw Bubba standing
4 over there, too. Wow, Superman, x-ray
5 vision, see right through that stuff. And
6 I could see Bubba standing there with the
7 glow.

8 Then when she was told, Kayla, you
9 can't see that from where you were. Oh,
10 well, then I must have smelled it. I must
11 have smelled it. That's what alerted me, I
12 must have smelled it. Listen to that tape,
13 watch it in case you didn't pay attention
14 the first time. I must have smelled it.

15 That's not changing. It goes from
16 Bubba did it the night before, then I
17 assume Bubba did it. Now I saw Bubba
18 standing over there in the fire. Oh, I
19 can't see it? Okay. Well, then I smelled
20 the smoke. And then it goes to, Well,
21 maybe I didn't fall asleep. That ain't a
22 changing story? And then it goes to the
23 jail call, Well, dad or Brennan must have
24 set that fire. Dad or Brennan must have
25 set it.

1 We can't prove she acted
2 knowingly? Ladies and gentlemen, you see
3 this picture here and you're going to see
4 these other ones here, this one right here,
5 so in order for Bubba -- there's only two
6 other plausible explanations as it's been
7 stated, that it was a cigarette, but it had
8 to be two cigarettes because we got two
9 points of origin because fire doesn't hop
10 from one side to the other, so the other
11 plausible explanation is Bubba started the
12 fire.

13 So Bubba had to crawl over that
14 mattress and get over here first and light
15 this fire. And then he can't crawl over
16 that door there because that's a door that
17 sits high, it's a regular door just like
18 that door right there, sitting on its side,
19 you know how hard it would be for you to
20 throw your leg over it and now you're going
21 to ask a three-year-old to crawl over that
22 without knocking it over? So then he has
23 to crawl over that burning mattress and
24 come over here to the front side of it and
25 light this part on fire. That's plausible?

1 No.

2 There's one plausible explanation
3 here. There's one person who's taken a
4 story and changed it every time she's
5 confronted with the physical evidence, the
6 physical evidence that contradicts
7 everything she says. And now that
8 guilt-o-meter is going from here to all the
9 way over here, to proof beyond a reasonable
10 doubt, because the only plausible
11 explanation in this case is that Kayla
12 Ayers took a lighter and lit that mattress
13 twice. The Baking Soda's been added to
14 these cookies, bake them, because Kayla
15 Ayers is guilty and it's proven beyond a
16 reasonable doubt. Thank you.

17 THE COURT: Thank you, Attorney
18 Barr.

19 At this point I'm going to
20 continue with my instructions of law. And
21 at this point we're on page 13 under the
22 Deliberation Instructions.

23 And at this time I'm going to ask
24 counsel, before I go on instructing the
25 jurors with reference to the procedure of

1 the deliberations, is there anything by way
2 of addition, subtraction, or amendment to
3 the charge as given?

4 MR. BARR: No, Your Honor, not on
5 behalf of the State, thank you.

6 MR. KUHN: No, thank you, Judge.

7 THE COURT: All right. Thank you.

8 All right, ladies and gentlemen,
9 your initial conduct upon entering the jury
10 room is a matter of importance. It is not
11 wise immediately to express a
12 determination, to insist upon a certain
13 verdict, because if your sense of pride is
14 aroused, you may hesitate to change your
15 position even if you later decide you are
16 wrong.

17 Consult with one another, consider
18 each other's views and deliberate with the
19 objective of reaching an agreement, if you
20 can do so, without disturbing your
21 individual judgment. Each of you must
22 decide this case for yourself, but you
23 should do so only after a discussion and
24 consideration of the case with your fellow
25 jurors. Do not hesitate to change an

1 opinion if convinced that it is wrong.
2 However, you should not surrender honest
3 opinions in order to be congenial or to
4 reach a verdict solely because of the
5 opinions of the other jurors.

6 If during your deliberations you
7 have a question, it should be discussed in
8 the privacy of your jury room. It should
9 not reflect the status of your
10 deliberations. It should be reduced to
11 writing so that there will be no
12 misunderstanding as to what you request.
13 It should then be delivered to the bailiff
14 who will submit it to the Court.

15 You should confer with each other
16 in your deliberations and give careful
17 consideration to the views expressed by
18 each juror.

19 After your verdict is returned,
20 you may discuss this case with anyone, but
21 you are not required to do so. Whether you
22 discuss this case with counsel or with
23 anyone else after you are discharged is a
24 matter of your own choice.

25 All right. Now if you'll flip to

1 the last two pages of these instructions,
2 you're going to find the verdict forms.
3 You will have the actual verdict forms and
4 an envelope to place the verdict forms in,
5 but this is just for purpose of my
6 explanation of the verdict forms to you.

7 And these verdict forms read as
8 follows: In the Court of Common Pleas,
9 Stark County, Ohio, State of Ohio,
10 Plaintiff, versus Kayla Jean Ayers,
11 Defendant, Case number 2012 CR 1567. And
12 the first one is the verdict as to the
13 offense of Aggravated Arson. Verdict form
14 reads as follows: We, the jury in this
15 case, being duly impaneled and sworn, do
16 find, by proof beyond a reasonable doubt,
17 that the Defendant, Kayla Jean Ayers, and
18 after that there is a blank, and you're
19 instructed to enter either "guilty" or "not
20 guilty," depending on what your verdict is,
21 of the offense of Aggravated Arson as
22 charged in Count One of the indictment in
23 violation of Revised Code 2909.02(A)(2).

24 Each of us said jurors concurring
25 in said verdict signs his or her name

1 hereto this blank, fill in whichever date
2 you render this verdict, day of January,
3 2013.

4 And you'll notice that there are
5 12 lines. In order to reach a verdict, you
6 must be unanimous, so all 12 jurors must
7 agree. And as I will explain further, the
8 foreman or forewoman, whoever you would
9 decide is that person, will sign on the
10 first line as indicated.

11 Going on to the next page, page
12 20. In Stark County -- Court of Common
13 Pleas, Stark County, Ohio, State of Ohio,
14 Plaintiff, versus Kayla Jeans Ayers,
15 Defendant. Case number 2012 CR 1567,
16 verdict as to the offense of Endangering
17 Children. We, the jury in this case, being
18 duly impaneled and sworn, do find, by proof
19 beyond a reasonable doubt, the Defendant,
20 Kayla Jean Ayers, again there is a blank
21 there for you to fill in either "guilty" or
22 "not guilty," depending on what your
23 deliberations shake out to be, of the
24 offense of Endangering Children as charged
25 in Count Two of the indictment in violation

1 of Revised Code 2919.22(A).

2 Each of us said jurors concurring
3 in said verdict signs his or her name
4 hereto this blank day of January, 2013.

5 And, again, there are 12 lines for
6 signatures, as all 12 jurors must agree in
7 order to reach a verdict. And, again, the
8 foreperson will sign on the first line.

9 Just so that you know, there are
10 two separate verdicts, you need to fill out
11 both of the verdicts. One pertains solely
12 to the count of Aggravated Arson and the
13 second one concerns solely the offense of
14 Endangering Children. So there are two
15 separate verdict forms, you must fill out
16 both when you reach a verdict with respect
17 to each one.

18 Are there any questions about
19 that? Okay.

20 All right. The Court will place
21 in your possession the verdict forms. The
22 foreman or forewoman will retain possession
23 of the verdict forms and return them to the
24 courtroom.

25 Upon your retirement, you will

1 immediately proceed to select one of your
2 number as a foreman or forewoman.

3 The purpose in appointing or
4 electing a foreman or forewoman is not
5 because anyone has any greater weight or
6 authority than anyone else, but it is so
7 that somebody elected will be there to see
8 that deliberations are carried on in an
9 orderly fashion.

10 Also, there will be somebody to
11 fill in whatever is needed whenever there
12 is a blank or other matter to be filled in
13 in connection with this case. It is also
14 the responsibility of the foreman or
15 forewoman to confine the discussions in the
16 jury room to the evidence and the law in
17 this particular case.

18 Whenever all twelve, again I
19 repeat, all twelve jurors agree upon a
20 verdict, you will sign the verdicts in ink
21 and advise the bailiff. You will then be
22 returned to the courtroom.

23 The rules of law, which were
24 explained to you in these instructions, are
25 binding upon the individual conscience and

1 judgment of each member of the jury. It is
2 your duty as jurors to consult with one
3 another and to deliberate with a view to
4 reaching a common verdict. Each of you
5 must decide this case for himself or
6 herself, but you should do so only after a
7 consideration of the views of your fellow
8 jurors and you should not hesitate to
9 change your opinion when others convince
10 you that you are in error.

11 You should, however, not be
12 influenced to vote any way on a question
13 submitted to you solely because the
14 majority of the jurors favor such a
15 decision. Nor should a juror turn a deaf
16 ear to his or her associate jurors and,
17 without listening to their reasons or
18 arguments, obstinately stand upon his or
19 her own opinion.

20 It must be the object of all of
21 you to arrive at a common conclusion as to
22 the charge and to this end you should
23 deliberate together with calmness and in a
24 dispassionate manner being considerate of
25 each other's viewpoints on the evidence.

1 you twelve people to agree. And, again,
2 you all must agree.

3 If you have not agreed on a
4 verdict by about 4:30 this afternoon, you
5 may adjourn until 9 a.m. tomorrow morning
6 for further deliberations. However, should
7 you prefer to continue your deliberations
8 past 4:30 this afternoon, please advise my
9 bailiff of such and she will make the
10 necessary arrangements.

11 I'm not telling you to take that
12 much time or to take any less time. You
13 take whatever time is necessary to properly
14 consider all of the evidence and applicable
15 law.

16 Whenever you do disperse, remember
17 the admonition about not talking about the
18 case. This is especially imperative during
19 breaks from deliberations. Also, if your
20 deliberations require lunch breaks and
21 adjournments, the admonition applies during
22 such periods. And you know, as I've
23 instructed you all along, while you're
24 deliberating unless you are all twelve in
25 the same room together deliberating, you're

1 not to permit anyone to discuss the case
2 with you or permit it to be discussed in
3 your presence.

4 And it's especially true of
5 deliberations that you stay away from any
6 sort of media; social media, Internet
7 media, print media, televised media with
8 respect to this case or any of the terms
9 that have been used in this case. It would
10 be highly improper for any of you to make
11 such research upon yourselves.

12 At this time I'd ask counsel to
13 approach.

14 - - - - -
15 (A conference was held at the
16 bench outside the hearing of the
17 jury.)

18 - - - - -
19 THE COURT: Juror number 35 is the
20 one who had the contact with the witness.
21 Do you want me to bring him up now so you
22 can question him?

23 MR. BARR: Yeah, I think we should
24 for the record.

25 THE COURT: It would be before I

1 dismiss the alternates.

2 (End of conference at the bench.)

3 - - - - -

4 THE COURT: Juror number 35, if
5 you could come up here for a second. I
6 don't mean to single you out, but I do have
7 something I would like to discuss with you.
8 And he's not in trouble, so don't worry.

9 - - - - -

10 (A conference was held at the
11 bench outside the hearing of the
12 jury.)

13 - - - - -

14 THE COURT: It's come to our
15 attention that you had contact with a
16 witness.

17 JUROR #35: Yes, I did, yeah.

18 THE COURT: Did he ask you for a
19 lighter?

20 JUROR #35: Yes.

21 THE COURT: I'm sure at the time
22 you didn't notice he was a witness?

23 JUROR #35: No.

24 THE COURT: Did he make comments
25 to you about the case?

1 JUROR #35: No, that was -- I gave
2 him the lighter, handed it to him.

3 THE COURT: Anything about that
4 contact that you think this wouldn't be a
5 good case to reach a verdict, you could be
6 fair and impartial?

7 JUROR #35: No, I didn't think
8 anything.

9 THE COURT: Did you tell any of
10 the other members of the jury?

11 JUROR #35: No.

12 THE COURT: Do you want to ask any
13 questions?

14 MR. BARR: No, Your Honor.

15 MR. KUHN: No.

16 THE COURT: I wanted to thank you
17 for bringing that to our attention, we do
18 appreciate it. Okay.

19 (End of conference at the bench.)

20 - - - - -

21 THE COURT: All right. At this
22 time I'm going to ask all twelve members of
23 the jury panel if they are able to proceed
24 to a deliberation in this case. Everybody
25 okay to deliberate?

1 All right. With that then, I
2 would like to thank our alternates --
3 alternate jurors, Jurors number 44 and 49
4 for your service. Again, it's only through
5 people like you, who dedicate your time and
6 the attention that you've given to this
7 case, that you ensure our American system
8 of government continues to work.

9 You are dismissed. Do they need
10 to call back in?

11 THE BAILIFF: No.

12 THE COURT: You will not need to
13 call back in, you are free. You are
14 dismissed from this case. However, you are
15 not dismissed from my admonition about
16 discussing the case until a verdict is
17 finally reached, okay?

18 I do, again, appreciate the time
19 and your efforts that you've given in this
20 matter. I know sometimes it's hard to sit
21 there and listen when you're not sure that
22 you actually get to do all the fun work,
23 but we do appreciate it.

24 We do have a certificate of
25 service for you to take with you, as well

1 as an evaluation of how we did here today.
2 We have given you a self-addressed stamped
3 envelope to return it, if you feel so
4 inclined, just so that we know what we're
5 doing right or wrong and what needs to be
6 improved, okay? So you are excused. Thank
7 you again for your service.

8 (Thereupon, Jurors 44 and 49
9 exited the courtroom at 2:24
10 p.m.)

11 THE COURT: Okay. And counsel,
12 the procedure that I have outlined for the
13 deliberations in this case, is that
14 satisfactory to each of you?

15 MR. BARR: Yes, Your Honor.

16 MR. KUHN: Yes, Judge.

17 THE COURT: Okay. With that then,
18 the case is in your hands. Again, you will
19 have a copy of my instructions as well as
20 the verdict forms to be filled out, as well
21 as the exhibits that have been admitted.
22 And you'll notice that you'll have two CDs
23 back there that contain both the statement
24 and the phone calls that were made. If at
25 any point during your deliberations you

1 feel the need to have those played, just
2 contact the bailiff and we'll make those
3 arrangements, okay?

4 All right. With that then, you
5 are excused.

6 THE BAILIFF: All rise.

7 (Thereupon, the jury went
8 to deliberate at 2:25 p.m.)

9 THE COURT: Prior to sending the
10 exhibits back, we'll double check and make
11 sure that we have them.

12 With that then, if you're going to
13 go too far, let us know. I guess you
14 really can't go too far.

15 MR. BARR: We will be across the
16 street.

17 THE COURT: Okay. We'll give you
18 a call.

19 (Thereupon, the jury had a
20 question at 3:25 p.m.)

21 THE COURT: All right. The jury
22 has submitted the following question in
23 writing: Based upon the testimony of Karen
24 Ball was purse & backpack inside home or
25 outside the home?

1 Present in the courtroom is Dennis
2 Barr and Toni Schnellinger on behalf of the
3 State, and Attorney Matt Kuhn and Attorney
4 April Bible on behalf of the Defendant.

5 Counsel, do you waive your
6 client's presence to address this?

7 MS. BIBLE: Yes, Your Honor, since
8 I know what your response is going to be.

9 THE COURT: It will be the Court's
10 response to the jurors that they are to
11 rely on their own collective memories in
12 making the determination as to the facts,
13 and they will not be entitled to a
14 transcript of the courtroom testimony. Is
15 that fair enough?

16 MR. BARR: Sounds fair.

17 MR. KUHN: Sounds good.

18 THE COURT: Okay. Do you want me
19 to write it down, Lori? This is the
20 Court's written response: The Court
21 instructs you to rely on your collective
22 memory regarding the testimony of the
23 witnesses. You will not be given a
24 transcript of the courtroom testimony.

25 MR. BARR: Thank you.

1 (Thereupon, the jury reentered
2 the courtroom at 4:35 p.m.)

3 THE COURT: Okay. You may be
4 seated.

5 Ladies and gentlemen, it's my
6 understanding that at this time you wish to
7 cease your deliberations for today and
8 reconvene tomorrow. Is it 9:00, or had you
9 picked a different time?

10 JUROR #33: 9:00.

11 THE COURT: 9:00, okay. And my
12 only reason for bringing you back in, I
13 don't want to know the status of your
14 deliberations, but because it is so
15 important, especially during this part of
16 the trial, for you not to be influenced by
17 any outside source, I just wanted to
18 admonition you one more time that during
19 the evening recess, you are not to discuss
20 this matter with anyone or permit anyone to
21 discuss it in your presence. Do not
22 discuss the case among yourselves. And
23 don't form or express any opinion on the
24 case until it's finally submitted to you.

25 And, again, this is probably even

1 harder than last night was to have that
2 natural desire to want to talk to your
3 family and your friends about what you are
4 doing and your experience, and I'm
5 instructing you that you are not permitted
6 to do that under any circumstances.

7 I'm also instructing you that you
8 are not to view any media, whether it be
9 print media, television, radio, any
10 information from those sources on this
11 trial or any of the issues related to this
12 trial.

13 Additionally, with technology as
14 it is, I have to admonition with respect to
15 the Internet. Do not do any searches on
16 the Internet with respect to any of the
17 issues in this case or to the case itself.
18 Do not go on Twitter or Facebook if
19 there -- to see any comments or ask any
20 questions about this case.

21 Essentially just put yourself in a
22 bubble. Have a good night. And, again,
23 you got to curb that natural desire to talk
24 to your loved ones about this case. And
25 hopefully you'll be done tomorrow and

1 you'll be released from that instruction,
2 and you can talk to whomever you want or
3 not whomever you want.

4 But I just wanted to stress that
5 issue upon you because it is, in my
6 opinion, the hardest part to be
7 deliberating and to go home and be exposed
8 to all of those things out there and want
9 to do things, whether it be talk or you
10 want to find out more because you want to
11 make sure you're doing the right thing, but
12 I'm instructing you that you would not be
13 doing the right thing by looking at any
14 other source. And you have my instructions
15 of law and that is the only source of law
16 that you are to follow, and the evidence
17 that you heard in the courtroom is the only
18 evidence that you are to consider, okay?

19 With that then, you are adjourned
20 with that admonition. Have a good evening
21 and we'll see you back here sometime
22 tomorrow, okay?

23 THE BAILIFF: All rise.

24 - - - - -

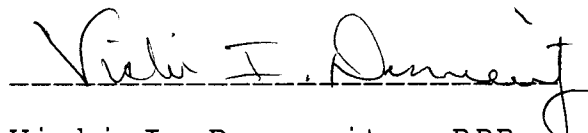
25 (Thereupon, court adjourned at

4:38 p.m. on January 29, 2013)

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C-E-R-T-I-F-I-C-A-T-E

I, Vicki I. Dennewitz, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, do
hereby certify that I reported in Stenotypy
the testimony had; and I do further certify
that the foregoing is a true and accurate
transcription of said testimony.


Vicki I. Dennewitz, RPR

All exhibits are being held by the
Evidence Administrator and are available
upon advance request.

2013 MAR 27 AM 11:33
CLERK OF COURT
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

CASE NO. 2012 CR 1567

2013 CA 00034

STATE OF OHIO,)
)
Plaintiff,) TRANSCRIPT OF
) PROCEEDINGS
versus)
)
KAYLA J. AYERS,) VOLUME NO. III
)
Defendant.)

BE IT REMEMBERED, That upon the
hearing of the above entitled matter in the
Court of Common Pleas, Stark County, Ohio,
before the Honorable Kristin G. Farmer,
Judge, and commencing on January 30, 2013,
the following proceedings were had:

- - - - -

VICKI I. DENNEWITZ, RPR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

1 APPEARANCES:

2
3 On Behalf of the Plaintiff:

4
5 Stark County Prosecutor's Office

6
7 Dennis Barr, Assistant Prosecutor

8 Toni Schnellinger,

9 Assistant Prosecutor

10 Stark County Office Building

11 Suite 510

12 Canton, Ohio 44702

13
14 On Behalf of the Defendant:

15
16 Stark County Public Defender's Office

17
18 Matthew Kuhn, Attorney at Law

19 April Bible, Attorney at Law

20 201 Cleveland South

21 Canton, Ohio 44702

22

23

24

25

I N D E X

VERDICT

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SENTENCING

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- - - - -

P R O C E E D I N G S

- - - - -

(Thereupon, the jury began
deliberating at 9:15 a.m.)

- - - - -

(Thereupon, the jury reached a
verdict at 9:40 a.m. on
January 30, 2013 and the following
proceedings were had.)

- - - - -

THE COURT: Counsel approach for a
moment.

- - - - -

(A conference was held at the
bench.)

- - - - -

THE COURT: Now, should the
verdict be guilty, does the State have a
recommendation as to a sentence?

MR. BARR: It's an F2; isn't it?

MS. SCHNELLINGER: Uh-huh.

MR. BARR: So eight, seven, eight.
Seven years.

THE COURT: Okay. Anything you
want to talk about before we bring them in?

1 MR. KUHN: I don't think so.

2 Thank you, Judge.

3 THE COURT: All right. Very good.

4 (End of conference at the bench.)

5 - - - - -

6 THE COURT: Just to let you know,
7 The Massillon Independent is here, not
8 right now, they're downstairs with the
9 cameras, and does anyone have any objection
10 to them being present in the courtroom?

11 MR. BARR: No.

12 MR. KUHN: No, Your Honor.

13 (Thereupon, the jury entered
14 the courtroom at 9:51 a.m.)

15 THE COURT: Okay. Good morning,
16 ladies and gentlemen, welcome back again,
17 and you may be seated at this time.

18 Now, have you picked someone of
19 your jury to be a foreperson?

20 JUROR #30: We have.

21 THE COURT: Okay. And what is
22 your number?

23 JUROR #24: 24.

24 THE COURT: Juror number 24?

25 JUROR #24: Yes, ma'am.

1 THE COURT: All right. Now, Juror
2 number 24, have you -- has your jury
3 reached a verdict --

4 JUROR #24: We have.

5 THE COURT: -- in this case? You
6 have? All right. Could you please hand
7 the verdict forms in the envelope to the
8 bailiff?

9 Okay. The Court having reviewed
10 the verdict forms and hereby pronounces the
11 verdict as follows: In the Court of Common
12 Pleas, Stark County, Ohio: State of Ohio,
13 Plaintiff, versus Kayla Jean Ayers,
14 Defendant, Case number 2012 CR 1567,
15 verdict as to the offense of Aggravated
16 Arson: We, the jury in this case, being
17 duly impaneled and sworn, do find, by proof
18 beyond a reasonable doubt, the Defendant,
19 Kayla Jean Ayers, guilty of the offense of
20 Aggravated Arson as charged in Count One of
21 the indictment in violation of Revised Code
22 2909.02(A)(2).

23 Each of us said jurors concurring
24 in said verdict signs his or her name
25 hereto the 30th day of January, 2013. And

1 the verdict form is signed by all 12
2 members of the jury.

3 The next verdict form is as
4 follows: In the Court of Common Pleas,
5 Stark County, Ohio, State of Ohio,
6 Plaintiff versus Kayla Jean Ayers,
7 Defendant, Case number 2012 CR 1567,
8 verdict as to the offense of Endangering
9 Children: We, the jury in this case, being
10 duly impaneled and sworn, do find, by proof
11 beyond a reasonable doubt, the Defendant,
12 Kayla Jean Ayers, guilty of the offense of
13 Endangering Children as charged in Count
14 Two of the indictment in violation of
15 Revised Code 2919.22(A).

16 Each of us said jurors concurring
17 in said verdict signs his or her name
18 hereto the 30th day of January, 2013. And
19 the verdict form is signed by all 12
20 members of the jury.

21 At this time I'm going to ask
22 counsel if they wish to approach and review
23 the verdict forms?

24 MR. BARR: No, Your Honor.

25 MR. KUHN: Yes, please, Judge.

1 THE COURT: Okay. You may
2 approach.

3 (Thereupon, counsel approached
4 and reviewed the verdict forms.)

5 MR. KUHN: Thank you, Judge.

6 THE COURT: Thank you.

7 And at this time does either the
8 State of Ohio or the Defendant request to
9 have the jury polled in this matter?

10 MR. KUHN: Yes, please, Judge.
11 Thank you.

12 THE COURT: Okay.

13 All right, ladies and gentlemen,
14 what I'm going to do now is what we refer
15 to as polling the jury. And what this
16 means is I'm going to ask you each
17 individually whether or not you, in fact,
18 entered a guilty verdict with respect to
19 each count.

20 So if you could also -- I will
21 call you by your juror number, but if you
22 could also just say your juror number so we
23 have that on the record and what your
24 verdict was with respect to each count,
25 okay?

1 So I will start with Juror number
2 2, is this your verdict and is your verdict
3 guilty with respect to the offense of
4 Aggravated Arson?

5 JUROR #2: Yes.

6 THE COURT: And is your verdict
7 guilty as to the offense of Endangering
8 Children?

9 JUROR #2: Yes.

10 THE COURT: All right, thank you.

11 Juror number 34, is your verdict
12 as to the offense of Aggravated Arson
13 guilty?

14 JUROR #34: Yes.

15 THE COURT: And is your verdict as
16 to the offense of Endangering Children
17 guilty?

18 JUROR #34: Yes.

19 THE COURT: Juror number 39, is
20 your verdict as to the offense of
21 Aggravated Arson guilty?

22 JUROR #39: Yes.

23 THE COURT: And is your verdict as
24 to the offense of Endangering Children
25 guilty?

1 JUROR #39: Yes.

2 THE COURT: Thank you.

3 Juror number 30, is your verdict
4 as to the offense of Aggravated Arson
5 guilty?

6 JUROR #30: Yes.

7 THE COURT: And is your verdict as
8 to the offense of Endangering Children
9 guilty?

10 JUROR #30: Yes.

11 THE COURT: And, I apologize, I
12 skipped right over Juror number 9. Juror
13 number 9, is your verdict to the offense of
14 Aggravated Arson guilty?

15 JUROR #9: Yes.

16 THE COURT: And is your verdict as
17 to the offense of Endangering Children
18 guilty?

19 JUROR #9: Yes.

20 THE COURT: Okay. And I apologize
21 for skipping over you.

22 Now, Juror number 13, is your
23 verdict as to the offense of Aggravated
24 Arson guilty?

25 JUROR #13: Yes.

1 THE COURT: And is your verdict as
2 to the offense of Endangering Children
3 guilty?

4 JUROR #13: Yes.

5 THE COURT: Okay. Juror number
6 16, is your verdict as to the offense of
7 Aggravated Arson guilty?

8 JUROR #16: Yes.

9 THE COURT: And is your verdict as
10 to the offense of Endangering Children
11 guilty?

12 JUROR #16: Yes.

13 THE COURT: Juror number 33, is
14 your verdict as to the offense of
15 Aggravated Arson guilty?

16 JUROR #33: Yes.

17 THE COURT: And is your verdict as
18 to the offense of Endangering Children
19 guilty?

20 JUROR #33: Yes.

21 THE COURT: Thank you.

22 Juror number 35, is your verdict
23 as to the offense of Aggravated Arson
24 guilty?

25 JUROR #35: Yes.

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THE COURT: And is your verdict as
to the offense of Endangering Children
guilty?

JUROR #35: Yes.

THE COURT: Juror number 22, is
your verdict as to the offense of
Aggravated Arson guilty?

JUROR #22: Yes.

THE COURT: And is your verdict as
to the offense of Endangering Children
guilty?

JUROR #22: Yes.

THE COURT: Juror number 24, is
your verdict as to the offense of
Aggravated Arson guilty?

JUROR #24: Yes.

THE COURT: And is your verdict as
to the offense of Endangering Children
guilty?

JUROR #24: Yes.

THE COURT: And Juror number 28,
is your verdict as to the offense of
Aggravated Arson guilty?

JUROR #28: Yes.

THE COURT: And is your verdict as

1 to the offense of Endangering Children
2 guilty?

3 JUROR #28: Yes.

4 THE COURT: Thank you all.

5 Counsel, is that sufficient?

6 MR. KUHN: Yes, thank you, Judge.

7 MR. BARR: Yes, Your Honor, thank
8 you.

9 THE COURT: Very good then.

10 Ladies and gentlemen, this does
11 conclude your service as jurors in this
12 case. As I indicated to you earlier, you
13 are now dismissed from my instructions not
14 to discuss this case or your experience as
15 a juror in this case with anyone. You may
16 discuss it, but you are not required to do
17 so.

18 In the event if someone should
19 approach you and -- to discuss this case
20 and you choose not to, but they continue to
21 insist or pressure you to talk to them,
22 please let us know and we'll take care of
23 that.

24 Again, I want to personally, both
25 for my own benefit as well as on behalf of

1 all the Judges in the Stark County Court of
2 Common Pleas, thank you for your service.
3 I know that it took a little bit longer
4 than we thought it was going to be, and I
5 appreciate your dedication and the fact
6 that you took this case very seriously.

7 Again, the service that you
8 rendered in this case was very important,
9 it was very important ensuring that both
10 the State and the Defendant were given a
11 fair trial. And, of course, without people
12 like you, we wouldn't ensure that our
13 system of justice continues to work. So
14 thank you, again, for your close attention
15 during the trial.

16 I am going to have you go back
17 into the jury room and I just want to talk
18 with you briefly and just again to
19 personally thank you for your service.

20 Before I dismiss the jury, is
21 there anything else?

22 MR. BARR: No, Your Honor.

23 MR. KUHN: I don't believe so,
24 Judge, thank you.

25 THE COURT: All right. You are

1 dismissed.

2 (Thereupon, the jury exited
3 the courtroom at 10:00 a.m.)

4 THE COURT: Before we proceed to
5 sentencing, I'm going to go back personally
6 to thank the jurors, and then we'll proceed
7 with the sentencing hearing, okay?

8 (Thereupon, a recess was taken
9 at 10:05 a.m. to 10:10 a.m.)

10 THE COURT: All right. You may be
11 seated.

12 All right. At this time the
13 verdicts having been rendered with respect
14 to each charge in this case, the Court is
15 going to proceed to a sentencing.

16 Now, Attorney Kuhn, is there
17 anything that either you wish to bring to
18 my attention prior to imposition of
19 sentence, or that your client wishes to
20 bring to my attention?

21 MR. KUHN: Yes, please, Judge, if
22 I could make a brief statement.

23 THE COURT: Sure.

24 MR. KUHN: And I believe Ms. Ayers
25 would like to address the Court personally,

1 if she would be allowed to do so.

2 Judge, we're very saddened by the
3 jury's verdict. Ms. Ayers still maintains
4 that she did not set this fire
5 intentionally and it may have been a result
6 of circumstances that she created. She is
7 very upset by this entire situation. I
8 think she does have hopes of reuniting with
9 her family at some point. I'm hopeful that
10 would be sooner rather than later.

11 I did explain to Ms. Ayers that I
12 believe the State of Ohio is seeking prison
13 time in this case. We're hopeful that you
14 might consider doing a presentence or a
15 post-sentence investigation to determine if
16 probation would be an appropriate fit for
17 Ms. Ayers.

18 I do believe she has some mental
19 health concerns that played into this
20 entire situation ranging from the
21 allegations against her and what she's been
22 convicted of up to and including her
23 failure to cooperate with the competency
24 evaluation.

25 I had another client previously

1 who refused to cooperate, and I think it's
2 sort of a telling sign. I think it's an
3 indicator that she does have some serious
4 mental health issues, and hopefully the
5 Court and the criminal justice system can
6 help her with those.

7 And so at this time we're hoping
8 that you may consider the probation route,
9 the mental health treatment route, as
10 opposed to merely incarcerating her for
11 some period of time. Thank you.

12 THE COURT: Thank you.

13 Ms. Ayers, do you wish to make a
14 statement?

15 DEFENDANT AYERS: Yes.

16 THE COURT: And before you do say
17 anything, just maybe mention to your
18 attorney what you're going to say because
19 it could have implications down the road.
20 So I'll give you a minute just to talk to
21 him about what you want to say.

22 (Thereupon, the Defendant had a
23 discussion with Mr. Kuhn.)

24 DEFENDANT AYERS: I took it all
25 the way to the box because I really didn't

1 do it so I was sure I wouldn't be found
2 guilty. And I've just never been in
3 trouble before and I can't go to prison.
4 Please, I should have took a deal, but I
5 didn't want to because I knew that I would
6 win, I just knew.

7 I'll go -- I'll go anywhere but
8 prison. Put me in a mental institute, I
9 don't care. Please don't put me in prison.

10 THE COURT: Okay. Anything
11 further?

12 MR. KUHN: I don't think so.
13 Thank you, Judge.

14 THE COURT: All right. At this
15 time it is the sentence of the Court that
16 the Defendant be sentenced to a term of
17 seven years imprisonment. A prison term of
18 seven years.

19 At this time, Ms. Ayers, I'm going
20 to inform you that at the time you complete
21 your prison term, the Adult Parole
22 Authority will place you on a mandatory
23 period of post-release control for three
24 years. It's important that you understand
25 that because if it's alleged, and

1 subsequently proven, that you did, in fact,
2 violate the terms and conditions of your
3 post-release control, your post-release
4 control could be revoked and you could be
5 returned to prison even though you served
6 your full stated prison term.

7 In such case, the amount of time
8 that you could be returned to prison could
9 be up to one half your stated prison term,
10 and that additional period of time could
11 run consecutively with any other prison
12 term which you were serving at the time.

13 And just to clarify that, with
14 respect to the count of Aggravated Arson,
15 it is the sentence of this Court a prison
16 term of seven years. And because you are
17 indigent, any fines will be waived.

18 And it is the sentence of this
19 Court with respect to the Endangering
20 Children, which is a misdemeanor of the
21 first degree, that you be sentenced to 180
22 days to be served concurrently with the
23 sentence for the F2 Aggravated Arson term,
24 for a total prison term of seven years.

25 You will be able to earn days of

1 credit pursuant to the Ohio Revised Code
2 Section 2967.193. These days of credit are
3 not automatically awarded, but must be
4 earned as set forth in that statute. And
5 there is a limitation on the number of days
6 that you can earn.

7 At this time, Ms. Ayers, you have
8 the right to an appeal of your conviction.

9 Attorney Kuhn, would you be
10 willing to accept the appeal on behalf of
11 the Public Defender's office, or would you
12 like counsel to be appointed?

13 MR. KUHN: Your Honor, we would
14 appreciate if you would appoint counsel in
15 this matter.

16 THE COURT: The Court will appoint
17 private counsel to handle your appeal. At
18 this time, subject to his ability, the
19 Court would appoint George Urban to handle
20 the appeal.

21 MR. KUHN: Great, thank you,
22 Judge.

23 THE COURT: All right. Anything
24 further from either the State or from the
25 Defendant?

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MR. BARR: No, Your Honor, thank
you.

MR. KUHN: Your Honor, my client
is curious if there's any chance that she
could be released before that seven year
date?

THE COURT: She can file any
appropriate motion, I won't make any
guarantees with respect. The only thing I
can guarantee is that any motion that is
filed will be taken under consideration.

MR. KUHN: Great, thank you,
Judge.

THE COURT: Okay. And I'll also
indicate that the costs of prosecution will
be awarded against the State -- or not
against the State, I'm sorry, the
Defendant. Okay.

MR. BARR: Thank you, Your Honor.

MR. KUHN: Thank you, Judge.

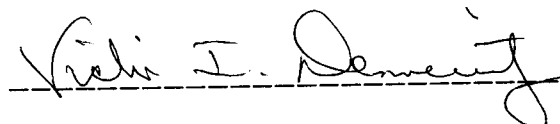
THE COURT: Ms. Ayers, good luck
to you.

- - - - -

(Thereupon, court adjourned at
10:25 a.m. on January 30, 2013)

C-E-R-T-I-F-I-C-A-T-E

I, Vicki I. Dennewitz, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, do
hereby certify that I reported in Stenotypy
the testimony had; and I do further certify
that the foregoing is a true and accurate
transcription of said testimony.

A handwritten signature in cursive script, reading "Vicki I. Dennewitz", is written over a horizontal dashed line.

Vicki I. Dennewitz, RPR

All exhibits are being held by the
Evidence Administrator and are available
upon advance request.